

**GOVERNMENT OF TELANGANA**  
**ABSTRACT**

Tribal Welfare Department – Bhadradi Kothagudem District - Revision Petition filed by Sri Vukanti Gopal Rao S/o Subba Rao, R/o Kothagudem, Bhadradi Kothagudem District U/s. 6 of Telangana State Scheduled Areas Land Transfer Regulation, 1959 as amended by Regulation 1/1970 against orders passed by the Special Deputy Collector (Tribal Welfare), Bhadrachalam in LTR case No.84/2020/CCP, dated 09.02.2021 – Allowed – Orders – Issued.

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**TRIBAL WELFARE (LTR) DEPARTMENT**

G.O.Ms.No. 71

Dated: 09-11-2021  
Read the following:-

1. Note received from Hon'ble M(TW,W&CW), C.No.301/N/M (TW,W&CW)/2021, dt.25.3.2021 along with Revision petition filed by Sri Vukanti Gopala Rao S/o. Subbarao, age: 53 yrs, Occ: Contractor, R/o. Qr.No. A/10/A, near SC Hostel, Main Hospital, Kothagudem, Bhadradi Kothagudem District dated 25.3.2021.
2. Issued as Govt.Memo.No.433/TW.LTR/2021, dt:07.04.2021.
3. Issued as Govt.Notice.No.433/TW.LTR/2021, dt:07.04.2021, 17.04.2021.
4. Letter RP.No. /2021 received from the Spl. Dy. Collector (TW) FAC, Bhadrachalam, dt:05.06.2021
5. Issued as Govt.Notice.No.433/TW.LTR/2021, dt.10.06.2021
6. Vakalat filed by Sri S.Madanmohan Rao, Advdocate, Hyderabad on behalf of Respondent 5 Sri Balagam Sridhar dt.14.06.2021
7. Issued as Govt.Memo.No.433/TW.LTR/2021, dt:22.06.2021.
8. Issued as Govt.Notice.No.433/TW.LTR/2021, dt:22.06.2021
9. Issued as Govt.Notice.No.433/TW.LTR/2021, dt: 08.07.2021
10. Reply/Objections filed by Sri Vukanti Gopal Rao through his Counsel dt.17.06.2021.
11. Issued as Govt.Notice.No.433/TW.LTR/2021, dt: 23.07.2021
12. Counter Affidavit filed by Sri Balagam Sridhar (Respondent 5) through his Counsel dt.10.08.2021.
13. Issued as Govt.Notice.No.433/TW.LTR/2021, dt: 14.08.2021
14. Lr. Rc. No.B/231/2021 Dated 16.08.2021 of Tahsildar, Chunchupally, Bhadradi Kothagudem District.
15. Gist of Written Arguments by Counsel for Revision Petitioner dt. 17.08.2021.

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**ORDER:**

In the reference 1<sup>st</sup> read above, Sri Vukanti Gopal Rao S/o Subba Rao, R/o. Qr.No. A/10/A, near SC Hostel, Main Hospital, Kothagudem, Bhadradi Kothagudem District has filed Revision Petition against the orders passed by the Special Deputy Collector (TW), Bhadrachalam on 9.2.2021 in LTR case No.84/2020/CCP in respect of the immovable property admeasuring 1200 sq.yds in Sy.Nos.48/1, 47/5 situated in Chunchupalli village and Mandal of Bhadradi Kothagudem District. The Revision Petitioner has urged the following grounds in his Revision Petition:

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- i) The impugned order dated 09.02.2021 in LTR case No.84/2020/CCP was communicated to him on 22.03.2021.
- ii) He is in possession and enjoyment of the schedule property measuring an extent of 1200 sq.yds in Sy.Nos.48/1, 47/5 situated at Vidyanagar Colony of Chunchupalli village in Chunchupalli Mandal and proceeding with building construction in it.

This property was owned and possessed by Smt. Bharatam Kistamma W/o Veeraiah R/o Kothagudem having acquired in the year 1969 for consideration and that regular sale deed was registered in her favour on 23.10.1978 in document No.976/1978. The said Bharatam Kistamma executed will deed dated on 27-02-2003 bequeathing the schedule property in his favour with all absolute rights and title.

The testator died on 31-07-2005. Accordingly, he acquired the possession with title by way of succession under the testament dated 27-02-2003 and since then continuing in possession and enjoyment, exercising full rights as owner to the knowledge of one and all and constructed a small house therein.

The Gram Panchayat, Chunchupalli assessed the said property on his name by allotting house number 3-2-134/2. Later on, the petitioner has submitted an application for construction of building in the schedule property along with plan of the proposed building. The Gram Panchayat did not respond to said submission and on the other hand orally informed that the Gram Panchayat is not issuing any construction permission within its panchayat limits but only assessing the houses after construction. Accordingly, he proceeded with the construction of building in the schedule land.

While it so, he came to know on 20-03-2021 that the 1<sup>st</sup> Respondent has initiated an LTR Case against him in respect of the schedule property at the instance of the 5<sup>th</sup> Respondent and that without issue of Form-E Notice or any Notice of hearing and without giving any opportunity to submit his explanation, counter etc., arbitrarily and in violation of principles of natural justice and the provisions of Regulation 1/1959 r/w 1/1970 passed ejectment order against him. On such information, he approached office of the 1<sup>st</sup> Respondent on 22-03-2021 and obtained the impugned order dated 09-02-2021.

- iii) Aggrieved by the order of the 1<sup>st</sup> respondent dated 09-02-2021 in LTR Case No.84/2020/CCP directing the 3<sup>rd</sup> Respondent to take the schedule property in possession of the Government by removing any person holding possession for the purpose of assignment to the eligible tribes, the petitioner is filing this Revision Petition before the Government.
- iv) The 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to note and appreciate that in order to exercise the powers under Sec.3(2)(a) of the Regulation 1/1959 R/W 1/1970 only after due notice to the person in possession of

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the property claiming under a transfer in violation of Sec.3(1) of the Regulation and after conducting an enquiry as prescribed.

- v) The 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to serve the Form-E notice or any notice of hearing before passing the order under revision on the petitioner and therefore, the order under Revision is not only contrary to the provisions of Sec. 3(2)(a) of the Regulation 1/1959 but also arbitrary and violation of principles of natural justice.
- vi) The observations of the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) in para-2 of the 1<sup>st</sup> page of the impugned order that, a Notice in Form-E under Rules 7(1) and 7(2) of the A.P. (SA) LTR Rules-1969 got served in the manner specified in Rule-10, is not correct and that in fact, the petitioner herein not served with any Notice(s) from the 1<sup>st</sup> Respondent.
- vii) The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to note and appreciate that, when no notice was served on the petitioner, the observation that he is absent and failed to file any documentary evidence, is not just and not sustainable under law.
- viii) The order under Revision is vague, ambiguous in nature and is purely basing on the assumptions and presumptions, as such causing grave prejudice to the petitioner.
- ix) The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) without serving any Notice, observing that the burden of proof lies on the non tribe to prove that he is legitimate owner of the schedule land, is not correct and the 1<sup>st</sup> Respondent failed to appreciate that he has no jurisdiction to conduct enquiry with regard to the title of the land, and that his jurisdiction is limited and restricted to the extent of ascertaining whether the person in possession has violated provisions of the Regulation 1/1959 r/w Regulation 1/1970, or not.
- x) The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to know and appreciate that, if the petitioner is given the opportunity of hearing, he could have appreciated that, the petitioner is in possession of the schedule property under testamentary succession, which does not come within the meaning of "transfer" as envisaged under Sec. 2 (g) of the Regulation. As such the ejectment order under revision is detrimental to the rights, possession, title and interest of the petitioner over the schedule property. Hence, not sustainable under law.
- xi) The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to note and appreciate that the 5<sup>th</sup> respondent (Sri Balagam Sridhar) at whose instance the case was initiated against the petitioner herein, has no locus standi to submit any application invoking the jurisdiction of the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam)

under Sec. 3(2)(a) of the Regulation 1/1959 r/w 1/1970, as he is neither interested person over the schedule property nor is a public servant. Therefore, the very initiation of the case is void ab initio. As such the impugned order under the Revision is nullity and unenforceable.

- xii) The schedule annexed to the order under revision is vague, ambiguous and there is no proper description of the property as per the settled procedure governing the description of the property.
- xiii) The 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) exercised the jurisdiction vested on him under Section 3(2)(a) of the Regulation illegally with material irregularity by not issuing any Notice and without giving any opportunity to the appellant.
- xiv) Under Section 6 of the Regulation 1/1959, the Government is vested with the jurisdiction to revise the order passed by the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) who is none other than the prescribed authority under the Regulation.
- xv) The 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to consider decision of the Hon'ble High Court in Vasudha Mishra's case as reported in 1998 (1) ALT 680, and failed to follow the guidelines issued by the Hon'ble High Court in the said case while issuing the order under appeal.
- xvi) The acquisition and continuing in possession of the schedule property by the petitioner under Will is not amounting to transfer under Sec.2 (g) of the Regulation 1/1959 r/w 1/1970 and the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to appreciate the meaning of transfer under Sec. 2 (g) and failed to take judicial notice of the recent decision dated 03-01-2013 of the Honble High Court at Hyderabad passed in WP No. 11198/2012 between Smt. Alapati Kanaka Durga & another Vs. The Special Deputy Collector, Tribal Welfare, K.R.Puram, Buttaigudem Mandal & others, reported in ALT (6) 2013 page-488 that, the acquisition of the immovable property situated in the scheduled area by virtue of will deed is not amounts to transfer under Sec. 2 (g) of the Regulation 1/1959 r/w. Regulation 1/1970 and amounts to succession.
- xvii) For the above and other grounds of revision that may be urged at the time of arguments, the revision petitioner prayed to suspend the impugned order under revision dated 9.2.2021 in LTR No.84/2020/CCP issued by the 1<sup>st</sup> respondent pending disposal of the revision, and call for the connected records from the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) and set aside the impugned order dated 9.2.2021 in LTR case No.84/2020/CCP in respect of the schedule property and pass such other order or orders as the Hon'ble Government deems fit and proper in the circumstances of the case.

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2. Along with the Revision Petition, the Petitioner has submitted the following documents in support of his contentions:

- Original impugned order dated 9.2.2021 in LTR case No.84/2020/CCP.
- Copy of registered sale deed dated 23.10.1978 in document No.976/1978 in favour of Smt.Bharatam Kistamma.
- Copy of ryot pass book issued by Tahsildar, Kothagudem in favour of Smt.Bharatam Kistamma in respect of schedule property.
- Copy of Will Deed dated 27.02.2003 executed by Bharatam Kistamma bequeathing the schedule property in favour of the revision petitioner with all absolute rights and title.
- Copy of Declaration dated 25.02.2010 of Bharatam Ram Kumar son of the testator admitting contents of the Will Deed.
- Copy of the Affidavit dated 25.02.2010 of Bharatam Ram Kumar submitted to the Gram Panchayat that he has no objection for giving construction permission to the petitioner.
- Copy of House Tax receipts on the name of petitioner in respect of schedule property.
- Copy of building plan submitted by petitioner to the Gram Panchayat.

3. In the reference 2<sup>nd</sup> read above, Government while admitting Revision Petition, has granted stay on the orders of Special Deputy Collector (TW), Bhadrachalam dt.9.2.2021 in LTR case No.84/2020/CCP in respect of the immovable property admeasuring 1200 sq.yds in Sy.Nos.48/1, 47/5 situated in Chunchupalli village and Mandal of Bhadrachalam District and also directed the SDC (TW) Bhadrachalam to submit para-wise remarks along with original record pertaining to the LTR case No.84/2020/CCP.

4. Accordingly, in the reference 4<sup>th</sup> read above, the Special Deputy Collector (TW), Bhadrachalam has submitted para-wise remarks along with case record in original pertaining to the LTR case No.84/2020/CCP.

5. In the reference 5<sup>th</sup> read above, Government has called the case for hearing on 14.06.2021. Revision Petitioner and his counsel present. Tahsildar, Chunchupalli present and submitted copies of pahanies related to the land under dispute. The SDC (TW) Bhadrachalam has submitted para-wise remarks to the Revision Petition. Sri S.Madan mohan Rao, Advocate appeared on behalf of Respondent-5 (Sri Balagam Sreedhar) and filed Vakalat (in the reference 6<sup>th</sup> read above). Copies of Revision Petition along with its documents and para-wise remarks of the SDC (TW) have been supplied to the Counsel for Respondent 5. Copy of para-wise remarks of SDC (TW) also supplied to the counsel for Revision Petitioner.

6. In the reference 9<sup>th</sup> read above, Government has called the case for hearing on 17.07.2021. Revision Petitioner and both the Counsel present.

Counsel for Revision Petitioner filed Reply/objections to the para-wise remarks of the SDC (TW) Bhadrachalam.

7. In the reference 11<sup>th</sup> read above, Government has called the case for hearing on 31.07.2021, Revision Petitioner and both the Counsel present. The Tahsildar, Chunchupalli was present with the record. Counsel for Respondent 5 prayed for time for submission of Counter Affidavit. Time has been granted till 10.8.2021. Accordingly, Counsel for Respondent 5 filed Counter Affidavit with documents. Copy of the same has been supplied to the Counsel for Revision Petitioner.

8. In the reference 13<sup>th</sup> read above, Government has called the case for final hearing on 17.08.2021. The Revision Petitioner and both the Counsel present. Heard the arguments.

9. In the references 10<sup>th</sup>, 12<sup>th</sup> & 15<sup>th</sup> read above, both the Counsel have submitted Replies, Objections, Counter Affidavits, Written Arguments etc. which are summed up as follows:

**I. PARAWISE REMARKS SUBMITTED BY SPECIAL DEPUTY COLLECTOR (TW), BHADRACHALAM i.e. RESPONDENT NO.1 & OBJECTIONS/REPLY SUBMITTED BY COUNSEL FOR REVISION PETITIONER**

**i) Remarks of SDC (TW) Bhadrachalam**

**Case was initiated on the petition submitted by 5<sup>th</sup> respondent Sri Balagam Sreedhar stating that the schedule land situated in Agency area originally belongs to B.Dasru and B.Chandri who sold it to Smt.Bharatam Kanakamma through registered sale deed dt.23.10.1978. The said Kanakamma sold it to one K.Rajendra Prasad who in turn again sold it to Vukanti Gopal Rao through a sada sale agreement dt.12.1.2012. The transaction is hit by Regulation and prayed to initiate LTR case against the Revision Petitioner and direct the concerned authorities to stop the work. Along with the petition, he filed (5) documents.**

**Basing on the said application, the 1<sup>st</sup> respondent (SDC TW Bhadrachalam) issued Notices to the Revision Petitioner herein through the 4<sup>th</sup> respondent i.e. Tahsildar, Chunchupalli Mandal. After receiving the Notices, the Revision Petitioner did not attend the court.**

**As per documents available, the 1<sup>st</sup> respondent (SDC TW Bhadrachalam) passed orders in LTR case No.84/2020, dt.9.2.2021.**

**Reply/objection of Revision Petitioner**

The 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) submitted his remarks under total misconception  
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of the provisions of Telangana Regulation 1/1959 r/w 1/70 as well as the spirit, object and purpose of it.

With regard to the contention that "he initiated the case against the petitioner herein upon the petition of 5<sup>th</sup> respondent (Sri Balagam Sridhar)", it is submitted that Sec. 3(2)(a) empowers the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) to initiate case and pass ejectment decree

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- a) on application by anyone interested or
- b) on information given in writing by a public servant or
- c) suo motu

Note: It is submitted that, anyone interested means and includes anyone having an interest i.e., right over the property which should exist independently.

Therefore, in order to initiate LTR case upon the petition submitted by the 5<sup>th</sup> respondent, the 1<sup>st</sup> respondent ought to have examined and enquired whether the 5<sup>th</sup> Respondent will come within the meaning of "person interested" in respect of the subject immovable property of the case and whether he can exercise the jurisdiction under Sec. 3(2)(a) by initiating LTR case and to pass an order? But, the 1<sup>st</sup> respondent failed to conduct anything in this regard and failed to give any finding, as to how the 5<sup>th</sup> Respondent can be considered as an interested person in the subject immovable property involved in this lis and what is his existing individual right in respect of subject property and the locus standi of the 5<sup>th</sup> Respondent to submit such petition or application for adjudication for the relief "to stop the building construction under process by the revision petitioner in the subject immovable property and whether the 1<sup>st</sup> respondent in exercise of his powers under Sec. 3(2)(a) is empowered to stop the process of building construction. On the other hand, in a mechanical way, not only initiated the case by entertaining the petition of the 5<sup>th</sup> Respondent but also passed order dt. 09-02-2021 mechanically.

The 1<sup>st</sup> Respondent ought to have appreciated that the 5<sup>th</sup> Respondent is not having any interest over or relating to the subject property and that, he is not having any existing right over the subject land and that he is no way concerned with the subject property. Therefore, the 5<sup>th</sup> respondent has no locus standi to submit any petition and to prosecute the proceedings with his status as petitioner to the lis, within the ambit and scope of Sec. 3(2)(a).

Hence, the very initiation of the case by the 1<sup>st</sup> Respondent upon the petition of 5<sup>th</sup> Respondent being a person, not interested in the subject property, is contrary to Sec. 3(2)(a) of the Regulation 1/1959 r/w 1/1970 and beyond the scope, purview and powers of the 1<sup>st</sup> respondent. Therefore, the proceedings are to be held and declared as void ab initio, without jurisdiction and consequently the impugned order is nullity and unenforceable one

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under law.

**ii) Remarks of SDC (TW) Bhadrachalam**

**Against orders of the 1<sup>st</sup> respondent (SDC (TW) Bhadrachalam), the appellate authority is Additional Agent to Government/Project Officer, ITDA, Bhadrachalam. The Revision Petitioner without availing the lower court opportunity approached this Court. Therefore, the Revision is not maintainable. As per the Regulation, the Revision lies only against the orders of the Additional Agent to Government. Therefore, the Revision is not maintainable.**

**Reply/objection of Revision Petitioner**

The contention of the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) is contrary to the provisions of Sec.6 of the Regulation 1/59 r/w 1970. Section 6 of the Regulation which reads as - "the State Government may revise any decree or order passed by the Agent, the Agency Divisional Officer or any other prescribed officer under this Regulation". Therefore, the contentions of the 1<sup>st</sup> respondent are nothing but a patent misconception of Sec. 6 and the 1<sup>st</sup> respondent even failed to appreciate that, against his decision under sec.3(2)(a) of the Regulation, an Appeal as well as well Revision lies before the competent authorities, at the option of the aggrieved party. Thus, the Revision Petitioner is having statutory right to file this revision against order of the 1<sup>st</sup> Respondent under Sec.6 of the Regulation and the Hon'ble Authority is empowered and vested with the jurisdiction to take cognizance of this Revision and dispose it in accordance with the law. Therefore, no credence need to be given to the objection of the 1<sup>st</sup> Respondent as to the maintainability of the Revision Petition.

**iii) Remarks of SDC (TW) Bhadrachalam**

**The registered sale deed dt.23.10.1978 is not valid and hit by Regulation as it is after commencement of the Regulation. The Revision Petitioner contention is that in the year 1969 land was handed over to the purchaser. There is no meaning in registering the land in the year when then the land was handed over in 1969. It is only an after-thought to prevent regulation. Only through registration the purchaser gets right i.e. in the year 1978. So the registered sale is invalid, as it is hit by the Regulation 1/1959 and as such other transactions are also invalid.**

**Reply/Objection of Revision Petitioner**

The contention of the 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) is absolutely incorrect and not only under misconception of the provisions of Regulation 1/1959



r/w 1/1970 but also against the purpose, scope and object of the said Regulation.

Section 3(1)(a) of the Regulation not only prohibits transfer of the immovable property situated in Agency tracts by a person in favour of a person who is not belongs to schedule tribe community but also declares such transfer as null and void. Likewise, Sec. 3(1)(b) of the Regulation declares that the possession of a person belongs to other than schedule tribe community over immovable property situated in the scheduled area should be presumed that such possession was acquired under a transfer made to him by a member of Scheduled Tribe, until contrary is proved.

Therefore, the 1<sup>st</sup> respondent ought to have confined and limit the scope of enquiry to the extent of deciding -

- (1) Whether there exists any transfer of subject immovable property situated in the Scheduled/Agency tracts in favour of Revision Petitioner or his predecessor in possession?
- (2) Whether the petitioner is claiming possession of subject immovable property under such transfer?

But, a bare perusal of the impugned order under Revision clearly disclosed that the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to adjudicate anything on the above two aspects and on the other hand passed the impugned order arbitrarily, on assumptions & presumptions more particularly in the absence of any such document on his file and without serving any Notice on the Revision Petitioner as laid under Sec. 7(1) of the Regulation. Therefore, the disposal of case done by the 1<sup>st</sup> respondent, is not only contradictory to the provisions of Regulation, but also in violation of principles of natural justice.

The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to appreciate that neither the Revision Petitioner nor his predecessor in possession claiming possession under the transfer effected in pursuant to the registered sale deed dated 23-10-1978 or contending that their possession over the subject immovable property was acquired by virtue of the sale deed dated 23-10-1978. When the deed itself is explanatory with regard to the delivery of possession, in the absence of any dispute between the original vendor and the purchaser with regard to the delivery of possession for the past about 42 years from the date of execution of registered sale deed and about 52 years from the date of delivery of possession, the 1<sup>st</sup> respondent has no cause of action under Regulation 1/1959 r/w 1/1970 to initiate, adjudicate and pass decree of ejectment against the revision petitioner basing on the sale deed dated 23-10-1978, under which the revision petitioner or his predecessor neither claiming possession nor title, and ought to have considered recitals of the document as well as the document for corroborative purpose evidencing possession since prior to the commencement of the Regulation 1/1970.

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The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to appreciate that he has no jurisdiction to go into the merits and demerits of the validity or otherwise of the title under the deed, while exercising powers under Sec. 3(2)(a) of the Regulation 1/1970, which should be the subject matter of competent Civil Court in appropriate proceedings between the competent parties.

The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) initiated the LTR Case No. 84/2020/CCP for the first time, after a delay of about 62 years from the date of taking over possession by the predecessor in possession of the subject property and after about 42 years from the date of execution of the registered sale deed dated 23-10-1978. When the law restricts the period of time for filing appeal in 60 days, and also provides that the provisions of Limitation Act are applicable, the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) ought to have appreciated that before taking cognizance of petition filed by the 5<sup>th</sup> respondent (Sri Balagam Sridhar) herein being an uninterested person in respect of subject land, ought to have enquired apart from his locus standi to file, on the point of delay also. But the 1<sup>st</sup> respondent failed to do so. Further, the 1<sup>st</sup> respondent failed to appreciate that, registration of a document stands as a notice about the transaction under Sec. 3 Explanation-1 of T.P. Act, more particularly as against the Government and its instrumentality and therefore, the adjudicating authorities vested with the suo motu power ought to have initiated the enquiry accordingly soon after the execution of registered document in the year 1978. Therefore, the very initiation of the LTR case and consequent issue of impugned order by the 1<sup>st</sup> Respondent is time barred one and hence, liable to be set aside.

There is no tribal interest involved in the subject land from the date of transfer of land in the year 1969. Therefore, the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) cannot assume or presume anything contra to the recitals of the registered sale deed which discloses that the possession was delivered in the year 1969, which is prior to the commencement of the amended provisions of Regulation 1/1970 w.e.f. 3.2.1970. Hence, the provisions of the Regulation cannot be made applicable in respect of the subject land and against the revision petitioner, being the legacy of his predecessor in possession, cannot come within the fold of contravention under Sec.3(1) (a) of the Regulation 1/1970.

The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) well as the instrumentality of the Government (Tribal Welfare Department and Registration Department) brought the amended provisions to Regulation 1/1959 by way of Regulation 1/1970 w.e.f. 03-02-1970 onwards without wide publicity about the said amendment as required. Until said crucial date of 03-02-1970, there is no bar or restriction with regard to the transactions between non-tribals in respect of the immovable properties owned and possessed by them. Whereas, the amended provisions under

Regulation 1/1970 came into force w.e.f., 03-02-1970 as a surprise and sudden change of existing law, which prohibited the transfer of immovable property situated in the Scheduled Areas in favour of any person belongs to non-tribal community. In such circumstances, it is the prime duty and obligation of the Government and it's instrumentality to give a very wide publicity about the changed law and apart from giving clear instructions to the Registration Department for not entertaining the registration of transactions relating to immovable property in between non-tribal or in favour of non tribal w.e.f., 03-02-1970, but no such publicity was made to awake the public nor communicated it its instrumentality and the Registration Department even. With the result, ordinary common people belongs to non tribal community (being citizens of Scheduled Areas) unaware of the amended provisions, continued the transactions in between them, and the registration department of the Government also without having knowledge continued entertaining the transactions and registering them duly collecting registration fee and stamp duty in between the period from 03-02-1970 till the year 1978 or 1979. As a result of which, thousands or lakhs of transfers/transactions relating to the immovable properties took place in the Scheduled areas in the State of Telangana as well as Andhra Pradesh between the non-tribals and the Government instead of taking immediate required action, kept quiet, while enjoying the proceeds of Registration charges and stamp duty from the transferees. Therefore, the 1<sup>st</sup> respondent being an instrumentality & subordinate of the Government is not empowered to leave all such transactions took place and registered in the Bhadradi Kothagudem District in between the period from 03-02-1970 to 1978 or 1979, and cannot exercise the powers under Regulation 1/1959 r/w 1/1970 by picking up the case of the revision petitioner alone exclusively, in particular, at the instance of the 5<sup>th</sup> respondent, who is also a person belongs to non-tribal community, an uninterested person in respect of the subject land at this belated stage and in a way encouraging and creation of disputes in respect of undisputed properties between the transferees and transferors, for satisfaction of the speculative & wrongful gains. Since the registrations upto 1978 or 1979 took place in a normal course, the contentions of the 1<sup>st</sup> respondent that the recital in the registered sale deed with regard to the delivery of possession in the year 1969 should be taken in it's literal sense but not otherwise.

Hence, the objections submitted by the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) in this regard exclusively and confining to the case of the revision petitioner cannot be considered by giving any weight under law and on the other hand said contentions are against the rule of equality under Article 14 of the Indian Constitution.

#### **iv) Remarks of SDC (TW) Bhadrachalam**

**The 1<sup>st</sup> Respondent (SDC (TW) Bhadrachalam) as per**

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**the procedure, after taking the petition from the 5<sup>th</sup> respondent (Sri Balagam Sridhar), issued Notice as per the LT Regulation Act to the person who is in possession of the land.**

**The 1<sup>st</sup> Respondent issued Form-E Notice and served through the 4<sup>th</sup> respondent (Gram Panchayat Secretary, Chunchupally) to the revision petitioner. Other Respondents appeared before 1<sup>st</sup> respondent upon receiving Notices, but the revision petitioner herein even after receiving the Notice failed to attend the court and nor submitted any explanation.**

**Reply/Objection of Revision Petitioner**

The question of appearance and consequent act of failure or appearance of the Revision Petitioner arises, in case, had if the 1st respondent (the Special Deputy Collector (TW), Bhadrachalam) caused to serve any Notice on the revision petitioner by giving respect to the principles of natural justice or in the manner as prescribed under Rule-7 (1) & 7 (2) r/w Rule-10 of the Scheduled Areas Land Transfer Rules, 1969. But the 1st respondent failed to get served any such Notice(s) on the Revision Petitioner in compliance of Rule 7(1) & (2) r/w Rule-10 of the Rules. On the other hand, the 1<sup>st</sup> respondent though the records before him establishing that the Notice(s) issued by him not at all served on the Revision Petitioner, has observed arbitrarily & hastily that as if the notices under Rule 7(1) & (2) were served in the manner as specified in Rule-10 in a mechanical manner. Therefore, the impugned order under Revision is liable to be set aside and the 1<sup>st</sup> respondent is put to strict proof contra to above.

**v) Remarks of SDC (TW) Bhadrachalam**

**The 5<sup>th</sup> respondent (Sri Balagam Sridhar), along with the petition filed copies of the documents before the court which clearly show the transaction is hit by Regulation and the revision petitioner possession is against law.**

**Reply/Objection of Revision Petitioner**

The alleged five documents listed in the remarks, xerox copies of them furnished to the petitioners are not formed part of the case records in LTR case No.84/2020/CCP on the file of 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam). Therefore, the 1<sup>st</sup> respondent cannot rely on them and further he is put to strict proof of their very existence & custody. Among them, one is the copy of the registered sale deed in favour of the predecessor (testator) in possession of the subject property of the Revision Petitioner which discloses and establishes that the possession was delivered to the testator in the year 1969. The

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other one is alleged sale agreement dated 24-02-2010 which discloses that one Kotapati Rajendra Prasad purchased an extent of 550 sq.yds for Rs.10,31,250 (Rupees Ten lakhs thirty one thousand two hundred and fifty only) and it discloses that the property was covered by registered sale deed dated 23-10-1978 in document No.976/1978 and that it also covered by another alleged sale admission declaratory agreement dated 21-11-2007 executed by one Smt.Bhukya Bhadri & 4 others. It is submitted that, when a sale was registered on 23-10-1978, the question of execution of sale admission declaratory agreement does not arise. Therefore, this document is fabricated and forged one.

Further, the recitals of the sale agreement dated 12-01-2012 are contrary to the alleged sale agreement dated 24-02-2010. The sale agreement dated 12-01-2012 discloses as if the petitioner purchased the total extent of 1200 sq.yds for Rs.6,50,000/- (Rupees six lakhs fifty thousand only) while agreement dated 24-02-2010 (i.e. two years before), the purchase of 550 sq.yds was shown for a consideration of Rs.10,31,250/-. The question of selling and consequent purchase of an extent of total 1200 sq.yds for Rs.6,50,000/- does not arise. These documents are fabricated and clearly brought into existence for the purpose to create a lis in respect of subject property.

**vi) Remarks of SDC (TW) Bhadrachalam**

**As per the Regulation, the LTR proceedings can be initiated suo-motu or on an application by anyone.**

**Reply/Objection of Revision Petitioner**

When the provisions of Sec. 3(2) (a) clearly declare and indicate that an LTR case can be initiated on an application by anyone interested or suo motu, the contentions of the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) that LTR proceedings can be initiated on application by anyone indicates and establishes that the 1<sup>st</sup> respondent had initiated the subject LTR proceedings not only contrary to the law, but also in abuse of his powers and at the instance of the 5<sup>th</sup> respondent, who is a person having no interest over the subject immovable property or claiming any interest and on the other hand passed the impugned order without serving any Notice on the Revision Petitioner.

**vii) Remarks of SDC (TW) Bhadrachalam**

**The 1<sup>st</sup> respondent (SDC (TW) Bhadrachalam) has given sufficient opportunity which was not utilized by the revision petitioner and as such the revision is not maintainable because he has not appeared before the 1<sup>st</sup> respondent.**

**Reply/Objection of Revision Petitioner**

Without serving even a Notice to the Revision Petitioner the contentions of the 1<sup>st</sup> respondent that he has given sufficient opportunity to the Revision Petitioner and that the Revision Petitioner not attended the Court and not utilized the opportunity  
(Contd....14)

is not correct. The 1<sup>st</sup> Respondent ought to have submitted the proof of such service before raising such contentions along with his remarks, but he failed to do so. Therefore, the Revision Petitioner hereby deny the averments and the 1<sup>st</sup> Respondent is put to strict proof.

**viii) Remarks of SDC (TW) Bhadrachalam**

**The Revision Petitioner filed a xerox copy of Will. The Revision Petitioner who is a NT cannot get land through a Will from another non-tribe which totally affects the intention of the Regulation. The Revision Petitioner is not a family member of the executants of the Will. It is a pure transfer of immovable property between two non-tribals hit by Regulation 1/59 amended by 1/70.**

**Reply/Objection of Revision Petitioner**

The contention is absolutely incorrect and a blunt misconception of the modus operandi of acquisition of property under a Will with that of acquisition of immovable property under a transfer. No-where else, the Regulation enacted as contended by the 1st Respondent (the Special Deputy Collector (TW), Bhadrachalam). Further, the 1<sup>st</sup> Respondent in the absence of anything in the enactment, has no authority or jurisdiction to interpret the law at his whims and fancies.

To come within the expression of "transfer" as defined under Sec. 2(g) of the Regulation 1/1959 r/w 1/1970, there shall be requirement of a transaction/transfer between two or more living persons and consequent delivery of possession of subject property in favour of the claimant of such transaction as on date of such transaction or prior to it as mutually agreed upon between the transaction parties. Whereas, in the matter of devolution (acquisition) of (immovable) property under a Will does not involve any sort of transaction between the living persons i.e., Executant(s) and the beneficiary (s) of such Will as on date of execution itself and no passing/delivery of possession, interest, right or title will take place between them as on date of such execution. On the other hand, the Will come into force or operation, after the death of the executant or testator. Therefore, when the legislature not restricted the rights of an owner of immovable property in the scheduled area to dispose of his property after his death and in the manner as required by him, the authorities under Regulation 1/159 r/w 1/1970, including the 1<sup>st</sup> respondent, absolutely has no jurisdiction to create a restriction while exercising powers, in an abusing manner, illegally, beyond the scope and purview of the Regulation, and such acts and the exercise of powers should be considered and declared as perverse.

Further, Sec. 5 of the Transfer of Property Act defines the term "**Transfer of property** " means; an act by which the living person conveys property in present or in future to one or

(Contd....15)

more other living persons, or himself and one or more other living persons and to transfer property is to perform such act, whereas, **Sec.2 (h) of the Indian Succession Act-1925** reads as "Will means the legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death." Similarly, "**Sec. 30 of Hindu Succession Act** reads as "Any Hindu may dispose of by Will or other testamentary disposition any property, which is capable of being so disposed by him, in accordance with the provisions of the Indian Succession Act-1925 or any other law for the time being in force and applicable to Hindus. "

According to Sec.63 of the Indian Succession Act, 1925 - "Every testator not being a soldier employed in an expedition or engaged in actual warfare or a mariner at sea, shall execute his will according to the following rules:

- (1) The testator shall sign or affix his mark to the Will or it shall be signed by some other person in his presence and by his direction.
- (2) the signature of or mark of the testator or the signature of the person signing for him, shall be so placed that it shall appear that it was intended thereby to give effect to the writing as a Will.
- (3) The Will shall be attested by two or more witnesses, each of whom has seen the testator sign or affix his mark to the Will or has seen some other person sign the Will in the presence and by the direction of the testator or has received from a testator a personal acknowledge of his signature or mark or of the signature of such other person and each of the witnesses shall sign the Will in the presence of the testator, but it shall not be necessary that more than one witnesses, but it shall not be necessary that more than one witness be present at the same time, and no particular form of attestation shall be necessary.

Thus, it is clear that, either Sec.30 of the Hindu Succession Act or Sec. 63 of the Indian Succession Act, 1925 not at all restrict the execution of a Will by the testator in respect of his property to or among his family members alone or to his class-I legal heirs or his relatives or kith and kin as contended by the 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam).

Further, according to Sec. 18 (e) of the Registration Act-1908, the registration of the Will is optional at the desire of the executant. Therefore, the contentions of the 1<sup>st</sup> respondent in his remarks are not only against the law but also without any legal basis.

Under the Regulation 1/1959 r/w 1/1970, the legislature prohibited the "**transfer**" of an immovable property situated in

Scheduled Areas in favour of any person belongs to non tribal community which may take place by way of "mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property and includes a charge on such property or a contract relating to such property in respect of mortgage etc. In order to effect or complete said prohibited modes of transfer(s), there must be two or more living persons as on date of such transaction(s)/ transfer(s) and the expression of "other dealing with immovable property" also should be interpreted and construed accordingly, which affects the possession during life time of the person in possession over the immovable property.

Accordingly, Sec.2(g) or Sec.3(2)(1)(a) & 1(b) or Sec.3(2)(a) & Sec.3(4) of the Regulation also did not restrict or prohibit the succession of the immovable property situated in the Scheduled Areas in favour of any person or restricted the execution of Will to the extent of family members or class-I legal heirs of the testator. Therefore, the contentions of the 1<sup>st</sup> Respondent in this regard are beyond his purview as an adjudicating authority and further against the law stated above.

Since the disposition of any property covered by or under a Will, does not come within the meaning of transfer, the legislature while giving the meaning of the expression "transfer" as stated above, have specifically mentioned in sec. 2(g) of the Regulation by enacting the words "not being a testamentary disposition". The word testament means and includes "a person's Will especially relating to personal property of the executant". Therefore, the disposal of an immovable property situated in the Scheduled Area under a Will executed by any person, irrespective of the fact whether such executant belongs to non-tribal community or tribal community and that the beneficiary vice versa, do not fall within the scope and purview of the expression 'transfer' and it amounts to a succession at the desire of the executant as expressed in his Will at his/her desire. As such the acquisition of any immovable property situated anywhere in India including the Scheduled Area by any person irrespective of his caste, creed and religion, is not amounting to transfer, and accordingly, the immovable properties covered under the Will(s) in respect of immovable properties situated in the Scheduled Areas are out of the purview and scope of the provisions of Regulation 1/1959 r/w 1/1970 and therefore, the 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) has no jurisdiction to say anything with regard to the Will Deed executed by the testator of the Revision Petitioner in her testament. The 1<sup>st</sup> Respondent has no jurisdiction or authority to interpret the meaning of Will within the scope or purview of transfer at his whims and fancies.

The 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) failed to appreciate that the question of execution of Will by a testator/executor arises, when he desires that his personal property should be disposed of otherwise than



under general succession in favour of his/her class-I legal heirs and wish to dispose of it specifically among certain particular person(s) of his Class-I legal heirs fall under general succession or to totally avoid the general succession of his class-I legal heirs and thereby to dispose of it in favour of a third party who might be a stranger to the family or other relative for his own reasons/causes. If at all any dispute or doubt in respect of the subject Will should be expressed or claimed at the option of the Class-I legal heirs of the testator or other person interested over the subject property of the Will, that too within a period of three years from the date of knowledge or consequent implementation of the Will by the beneficiary. But, in the present case, the Will in favour of the petitioner in respect of the subject land was implemented long back by the family members of the testator including her Class-I legal heirs. Therefore, the 5<sup>th</sup> respondent (Sri Balagam Sridhar) being a stranger & third party to the family and being an uninterested person in respect of the subject land, and the 1<sup>st</sup> respondent being an adjudicating authority has no cause of action or jurisdiction to raise any dispute or express doubt at their whims and fancies. The 1<sup>st</sup> respondent being adjudicating authority under Regulation 1/1959 r/w 1/1970 is not empowered to and has no jurisdiction to enquire, investigate and attribute anything at his convenience and in a way contra to the desire of the testator as expressed in the Will.

Therefore, the disputed contentions of the 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) with regard to the Will stands in favour of the petitioner, is beyond his jurisdiction and amounts to abuse of his powers. Hence, the contentions of the 1<sup>st</sup> respondent that the Will is a transfer, is not only meaningless, but also against the decision of the Hon'ble High Court in the order dated. 03-01-2013 in WP No. 11198/2012 between Smt. Alapati Kanaka Durga & another Vs. the Special Deputy Collector (TW), KR Puram, Buttaigudem Mandal & others and even contrary to the order of this Hon'ble Authority in G.O.Ms.No.45 Tribal Welfare (LTR) Department dated. 18-06-2021.

From the above facts and circumstances, the 1<sup>st</sup> Respondent (the Special Deputy Collector (TW), Bhadrachalam) committed grave errors and caused grave miscarriage of justice as under:

- (a) acted beyond and excess than his jurisdiction under Sec.3(2)(a) by initiating LTR proceedings in LTR case No.84/2020/CCP upon the vague and speculative petition of the 5<sup>th</sup> Respondent, who is no way concerned or interest in the subject property.
- (b) the 1<sup>st</sup> respondent though initiated the case failed to cause service of any notice in compliance of Sec. 7(1) & 7(2) of the Regulation 1/1959 r/w 1/1970 or the principles of natural justice to give an opportunity of being heard.

- (c) failed to conduct any enquiry with regard to the interest of the 5<sup>th</sup> Respondent over the subject property.
- (d) though the Respondent No.5 not filed any documentary evidence, the 1<sup>st</sup> Respondent passed impugned order erroneously & arbitrarily and directed the Tahsildar to eject the petitioner from possession of the subject land to take possession of the property into Government custody.

The Revision Petitioner submitted that there are no merits either in the impugned order dated 9.2.2021 issued by the 1<sup>st</sup> respondent (the Special Deputy Collector (TW), Bhadrachalam) in LTR case No.84/2020/CCP or in his para-wise remarks before the Government. Hence, prayed to allow the Revision and set aside order of the 1<sup>st</sup> respondent dt.9.2.2021 in respect of subject land in the interest of justice and equity.

**II. CONTENTIONS OF RESPONDENT 5 (Sri Balagam Sridhar) IN COUNTER AFFIDAVIT WHICH ARE REITERATED AS ARGUMENTS AND THE ARGUMENTS OF REVISION PETITIONER:**

**i) Contention of R5:**

**That one Sri Bhukya Thulisya belongs to Lambada community. The Lambada community was recognized and categorized as Scheduled Tribe community from 27.7.1977. He was the pattedar, owner and possessor of agricultural dry lands bearing Sy.Nos.48, 48/1/A to an extent of acs.2.00 gts situated at Chunchupalli village, Bhadraddri Kothagudem District, Telangana State. His name is mutated in Khasra pahani, Theen Saal pahani (seesal), Sethwar and revenue records as owner, pattedar and possessor of the above land. He paid property tax and issued ryothwari pass book also.**

**Argument of Revision Petitioner:**

It is undisputed fact between both parties that this land belongs to Bhukya Tulsya i.e. vendor of the testator of the Revision Petitioner who was the original pattedar, owner and possessor of the land to an extent of acs.2.00 and that the subject land is part and parcel of it.

**ii) Counter of R5**

**That one Kola Arjun Rao S/o Kola Narayana Swamy purchased the above land from erstwhile owner, pattedar and possessor with prior permission under registered sale deed. The name of Kola Arjun was mutated in the revenue records as owner and possessor of land bearing Sy.No.48/a to an extent of Ac.2.00 gts. He paid property tax to revenue department.**

(Contd....19)

**Argument of Revision Petitioner**

Document not produced by Counsel for R5. Hence, cannot be taken into cognizance.

**iii) Contention of R5**

**That one Thammisetty Radha W/o Thammisetty Nageswar Rao purchased 4046.86 square yards with hut bearing door No.6-91 said to be built in 1969, situated at Chunchupalli village from one Kola Arjun Rao S/o Kola Narayana Swamy under registered sale deed dated 11.12.1974 bearing document No.1951 of 1974. Her name was mutated in revenue records as owner and possessor.**

**&**

**That one Thammisetty Nageswara Rao S/o Thammisetty Rama Lingam purchased 4046.86 sq.yds with hut bearing Door No.6-90 (said to be built in 1969) situated at Chunchupalli village from Kola Arjun Rao S/o Kola Narayana Swamy under registered sale deed dated 11.12.1974 bearing document No.1952 of 1974. His name was mutated in revenue records as owner and possessor.**

**Argument of Revision Petitioner**

With reference to the registered sale deed dated 11.12.1974 in document No.1951 stands in favour of Smt.Thammisetty Radha, the vendor of this deed and the vendor of the registered deed relied upon by the revision petitioner are not one and same. Further, there is no recital that the sale was made previously against sale consideration and possession was delivered as existing in the sale deed relied upon by the Revision Petitioner. Further, the boundaries of the alleged extent of acs.1.00 (4046.86 sq.mts.) do not contain its survey number and on the other hand it shows that the property is thatched house bearing H.No.6-91 together with its appurtenant site total measuring an extent of 4046.86 sq. mtrs (acs.1.00).

East : Bhukya Tulasya ( Note: Vendor of the  
sale deed relied upon by revision  
petitioner)  
West : Bhadrachalam Road  
North: Vacant Site  
South: Thammisetty Nageswara Rao

Similarly, with reference to the registered sale deed No.1952, dt.11.12.1974 in favour of Sri Thammisetty Nageswara Rao, the vendor of this deed and the vendor of the registered deed relied upon by the revision petitioner are not one and same. Further, there is no recital that the land and that the sale was made previously against sale consideration and possession was delivered as existing in the sale deed relied upon by the revision petitioner. The boundaries of alleged extent of Acs.1-00 (4046.86 Sq. meters) do not contain it's survey number and on

the other hand it shows that the property is appurtenant site of thatched house bearing H.No. 6-91 together with its appurtenant site total measuring an extent of 4046.86 sq. mtrs. (Acs. 1-00)

East : Site of Bhukya Tulasya (Note: Vendor of the sale deed relied upon by revision petitioner)  
West : Khammam - Bhadrachalam Road  
North: Vacant Site and Poramboke land under cultivation  
South: Thammiseti Nageswara Rao

A bare perusal of these documents appear to be defective, as the vendor viz., Kola Arjuna Rao did not mention as to how he got this extent of Acs.2-00 and further a plain reading of the boundaries would disclose that this extent of Acs.2-00 is located on the western side of the land owned and possessed by Bhukya Tulasya, and further they are absolutely wrong since one and same boundaries were mentioned in both the deeds. Hence, the question of such location of boundaries does not exist on ground when one particular property divided into two parts and sold to two different persons.

Therefore, these documents are absolutely not related to the property of Bhukya Tulasya, who is the vendor of the testator of the revision petitioner and further such boundaries would not exist on ground.

It is the settled principle of law held by almost all the Hon'ble High Courts in South India including the Hon'ble High Court of Andhra Pradesh that when a conflict arises with regard to the extent, survey number or house numbers, boundaries will prevail over them. The revision petitioner is relying upon the following decisions in this regard.

- (1) Decision of the Hon'ble High Court of AP in CRP No.3838/2015 dated 16-11-2015 in B. Sreenivasulu Vs. Kusuma Kumari & others
- (2) Decision of the Hon'ble High Court of AP in WP Nos.12472, 12630 & 12650/2011 dated 12-03-2012 in Phelomena Education, Hyderabad case.
- (3) Decision of the Hon'ble High Court of AP in A.S. No.193/2008 dated 18-06-2020.

**iv) Contention of R5**

**That the Special Deputy Collector (TW), Bhadrachalam initiated LTR case No.31/2009/KGM in the name of Bhukya Bhadri W/o Bhukya Ramji against (1) Thallada Upendra Rao (2) Thota Mangamma (3) D.G.Prakasha Rao (died) rep.by his son (a) D.W.Shakespeare (b) D.W.Solman Ramesh Babu, (4) DMV Kumari (5) Manubothula Goverdhan**

(Contd....21)

**S/o Komaraiah (6) Saraswathi Madam @ Suwarna Rekha D/o Papa Rao (7) Bethalapudi Subba Rao, pertaining to the above land bearing Sy.No.48/1/A to an extent of acs.2.00 gts situated at Chunchupalli village, Bhadradi Kothagudem District. After enquiry, orders dated 6.10.2009 were passed to Tahsildar, Kothagudem to take said property in possession of the Government by removing any person holding possession. In compliance to the order, the said property was taken into possession of the Government. The Dharani portal also reflects the same as Government land.**

**Argument of Revision Petitioner**

With regard to the fresh & deviated contentions of the 5<sup>th</sup> respondent that one Kola Arjun Rao S/o Narayana Swamy purchased the land from the original owner with prior permission under registered sale deed. From said Kola Arjun Rao, one Thammisetty Radha w/o Nageswara Rao and one Thammisetty Nageswara Rao S/o Ramalingam purchased an extent of each 4086.86 Sq. yards total measuring 8172 Sq. yards under registered sale deeds dated. 11-12-1974 in document Nos. 1951/1974 and 1952/1974 and that the 1<sup>st</sup> respondent initiated LTR case No. 31/2009/KGM on the name of Bhukya Bhadri W/o Ramji against 1)Thallada Upendra Rao (2) Thota Mangamma (3) D.G. Prakasha Rao (died) represented by his sons D.W. Shakespear & Solmen Ramesh Babu (4) D.M.V. Kumari (5) Manubothula Govardhan (6) Saraswathi Madam @ Suwarna Rekha and (7) Bethalapud Subba Rao and passed order dated 06-10-2009 directing the Tahsildar, Kothagudem to take said property in possession into Government custody and accordingly taken possession and that accordingly the land became Government land, the same reflects in the Dharani portal.

The said contentions are no way connected with the subject property and when the 5<sup>th</sup> respondent without filing any documentary evidence of alleged date of purchase from the vendor of the testator of the revision petitioner is not permitted under law to raise any such vague and ambiguous pleas and further according to him out of the extent of acs.2.00 equivalent to 9680 sq.yds, 8172 sq.yds alleged to have been sold, as the testator of the Revision Petitioner already purchased the subject property of 1200 sq.yds. and this extent is not covered under said sales and further as the balance 308 sq.yds with the vendor of alleged sale deeds, the eastern side boundary corroborates with that extent by mentioning land of Bhukya Tulsya. Therefore, there is no iota of truth in the said contentions and the 5<sup>th</sup> respondent raised the plea in order to diver the issues. In this case, the only issue is whether the Revision Petitioner or his predecessor in possession claiming their possession under a transfer in violation of the provisions of Regulation 1/1970 or not? But the 5<sup>th</sup> respondent raised all the issues relating to the adjudications in a civil suit, knowing that the adjudicating authorities have no jurisdiction to go beyond the purview confined under the law.

(Contd....22)

Neither the testator of this Revision Petitioner nor this Revision Petitioner/the subject property of this case is not the subject matter of the LTR case No.31/2009/KGM covered by the order dated 06-10-2009 and therefore, the said order or consequent panchanama are no way concerned to the subject property of this Revision Petitioner. The contentions of the 5<sup>th</sup> Respondent are contra to the provisions of Sec.3(2) (a) of the Regulation, and according to the 5<sup>th</sup> Respondent, the pattadar belongs to Scheduled Tribe Community and in such circumstances, the duty of the adjudicating authorities is to restore the possession covered under the land in LTR Case No. 31/2009/KGM for which purpose the Regulation was enacted but not for taking over possession of the immovable properties by the Government. Therefore, the contentions of the 5<sup>th</sup> Respondent in this regard are self contradictory and unconcerned to the schedule land.

The 5<sup>th</sup> Respondent himself being a Ward Member of Vidyanagar Colony Gram Panchayat and belongs to non-tribal community, is an encroacher of Government land in Sy.No.137/1 and illegally constructed house bearing No.4-3-80/1 without obtaining any construction permission from the Gram Panchayat, and therefore, the allegations and submission of petition etc. by the 5<sup>th</sup> Respondent being a wrong doer cannot be considered with any credence under law and must be declared as trifles and the authorities ought to have given any priority to them since the very approach is purely speculative, malafide and dishonest one to obtain wrongful gain and to cause wrongful loss to the Revision Petitioner.

#### **v) Contention of R5**

**The Revision Petitioner by name Vukanti Gopal Rao S/o Subba Rao encroached in the land to an extent of 1200 sq.yds in Sy.No.48/1A situated at Chunchupalli village, Bhadrachalam-Kothagudem District in November, 2019 and making illegal construction without permission from competent authority. He dug 30 to 40 feet depth to construct stilt+ground+6 floors in the same property. He even felled trees on the main road. The Respondent No.5 herein had made representations to the competent authority but without any response. The Respondent No.5 herein had filed the WP (PIL) No.195 of 2020 on the file of the Hon'ble High Court for the State of Telangana and pending disposal.**

#### **Argument of Revision Petitioner**

The question that arises in this case is that, the 5<sup>th</sup> Respondent being a person encroached into Government land violating provisions of Regulation 1/1959 r/w 1/970, illegally

constructed house bearing No.4-3-80/1 without obtaining any building construction permission from the Gram Panchayat, and being a person residing in it illegally, has no locus standi to submit a petition against any person including the Revision Petitioner herein, on the allegation that he is proceeding with the construction illegally fabricating documents and on the strength of them, the 1<sup>st</sup> Respondent initiated LTR proceedings and passed the impugned order.

The bonafides and conduct of the 5<sup>th</sup> Respondent in his very approach by submitting the petition before the 1<sup>st</sup> Respondent and his subsequent approach by filing WP (PIL) 195/2020 is surrounded by clouds of suspicion of his unfairness and efforts to use the adjudicating authorities as well as the Hon'ble High Court even as a dias and sword for his speculative desires with dishonest and malafide intention only, for obtaining wrongful gain by himself and to cause wrongful loss to the Revision Petitioner by causing obstacles to the proposed construction of the Revision Petitioner under the guise of this sort of lis, and thereby to exploit the revision petitioner in order to extort some benefits wrongfully from him. Hence, it must be construed that the very approach of the 5<sup>th</sup> Respondent is nothing but with the bad intention and for that reason alone, the 5<sup>th</sup> respondent confined his relief in the petition submitted before the 5<sup>th</sup> Respondent as well as in the W.P.(PIL) No. 195/2020 to the extent of praying **"to stop the process of construction being carried by the revision petitioner until disposal of the LTR case that may be initiated by the 1<sup>st</sup> respondent"** while keeping the petitioner under the threat of demolition.

Therefore, there is no good faith on the part of the 5<sup>th</sup> Respondent in his approach as stated supra and being an uninterested person in respect of the subject property against the Revision Petitioner.

For these reasons alone, and in order to avoid any sort of litigations for the speculative desires & black mailing tactics, to satisfy personal or political revenges with dishonest and malafide intentions, the legislature while enacting the Regulation confined the right to invoke jurisdiction of adjudicating authorities under the Regulation by specifically using the expression "anyone interested" (in respect of the property of the lis) and in addition to that, in the interest of justice conferred such right on a public servant and further empowered the suo motu powers of initiation on the 1<sup>st</sup> Respondent as well upon the Agent to the Government.

In these circumstances, the 1<sup>st</sup> Respondent is under legal obligation and duty to examine and enquire on the point of the locus standi of the 5<sup>th</sup> Respondent to file any case under the Land Transfer Regulation against the Revision Petitioner and in particular whether he will come within the meaning of "person interested" in respect of the subject immovable property of the

case” invoking the jurisdiction of the 1<sup>st</sup> respondent and that thereby the 1<sup>st</sup> respondent can exercise the jurisdiction under Sec. 3(2)(a) considering the status of the 5<sup>th</sup> Respondent as Petitioner.

But the 1<sup>st</sup> Respondent failed to conduct any enquiry on these aspects and failed to give any findings or observations in this regard either in the impugned order or in the para-wise remarks, as to how the 5<sup>th</sup> respondent can file a case invoking the jurisdiction under Sec. 3(2)(a) of the Regulation within the meaning of the expression of “interested person” in respect of the subject immovable property, what is his existing right in the subject property and ought to have inferred the real intention of the 5<sup>th</sup> Respondent while requesting for the relief to stop the building construction under process by the revision petitioner in the subject immovable property until the disposal of the LTR Case that may be initiated. The 1<sup>st</sup> Respondent not only initiated the case but also passed impugned order in a hurried manner without even serving Form E Notice or any sort of Notice and without affording any opportunity of being heard to the Revision Petitioner. The 1<sup>st</sup> Respondent even failed to conduct any enquiry on the point, whether the 5<sup>th</sup> Respondent is establishing any cause of action for initiating the case against the Revision Petitioner in the absence of filing of any acceptable documentary evidence.

The contentions of the 5<sup>th</sup> Respondent relying upon the decision of the Hon’ble High Court reported in 2003(3) ALT 453 to 455 (paragraph 7) held that, third party is also interested person under the Regulation and that it is sufficient to hold interest in upholding the Regulation implementation. The said contention of the 5<sup>th</sup> Respondent is not correct and that the **ratio decidendi** in the decision of the case referred by him is relating to the “**applicability of principle of Resjudicata**” to the adjudications under the Regulation. Further, the decision not at all disclose about the adjudication of any issue relating to the meaning of expression “person interested” used in the Regulation or the persons who are having right to submit petitions, applications and representations for initiation of LTR cases under the Regulation.

The Hon’ble High Court in para-7 not held as contended by the 5<sup>th</sup> Respondent that a third party is also interested person under the Regulation. In para-7 of the decision, the observation of the Hon’ble High Court is that “it is true that Regulation enables not only Special Deputy Tahsildar but even any third person to submit complaints about the contravention of the Regulations”. Said observation is only *obiter dicta* (an expression of opinion but not essential to the judgement) and hence not binding as precedent. Therefore, the observations of the Hon’ble High Court in para-7 is not applicable to give a meaning that interested person means & includes third party who is having no concern with the subject property of the lis.



It is the settled preposition of law that a third party is always stood as third party only, and that at any point of time he cannot become an interested person in respect of the subject matter of the lis in order to proceed with cantankerously to harass the persons having rights over the properties. Therefore, whenever a third party/any person who is unconcerned with the subject immovable property of the proposed lis under the Regulation, the authority is under obligation to satisfy the object behind it, whether it is in the interest of public or speculative one by targeting one person and leaving thousands. But, the 1<sup>st</sup> respondent not at all exercised his powers on these aspects.

Therefore, it is prayed that the Hon'ble Government may be pleased to consider contention of the Revision Petitioner that, person interested means and includes a person having interest over the subject property of the lis but not a third party/stranger/a person unconcerned with the property and declare accordingly.

In this Revision Petition, both the 1<sup>st</sup> Respondent as well as the 5<sup>th</sup> respondents have not only submitted their contentions in the parawise remarks as well as in the counter affidavit, with new version of facts which are contra and beyond to the observations/findings in the impugned order under revision dated 09-02-2021 as well as to the contents of the petition submitted before the 1<sup>st</sup> Respondent & even in the affidavit file in the WP (PIL) 195/2020 respectively, but also come with some other documents to which the Revision Petitioner is not a party and are fabricated xerox copies.

It is the settled law as contended by the 5<sup>th</sup> Respondent that the Revisional Authority should confine to the record only. But in the present case, the 1<sup>st</sup> respondent without affording any opportunity to the revision petitioner, without issue of requisite mandatory Notices and without enquiry, passed the order by illegally exercising the powers under Sec.3(2)(a) of the Regulation in a hurried manner. Therefore, having no other go, the petitioner has to submit the material documents establishing his possession over the subject property is under testamentary succession but not by way of transfer in contravention of the provisions of the Regulation.

Therefore, it is submitted that, as held by the Hon'ble High Court in the decision reported in 2006(3) ALT 591 in Kurra Buchamma Vs. Government of A.P., this Hon'ble Authority should be precluded to consider the new set of facts and the fabricated xerox copies of the documents intended to rely upon by the 5<sup>th</sup> Respondent or the 1<sup>st</sup> Respondent.

#### **vi) Contention of R5**

**The Respondent No.5 asked the Revision Petitioner about the rights over the above land. The Revision Petitioner stated that he purchased 1200 sq.yds in**

(Contd....26)

**Sy.No.48/1A situated at Chunchupalli village from one Kotapati Rajendra Prasad S/o Rangaiah and one Kotapati Malayadri S/o Pedda Ramaiah under agreement of sale dated 12.01.2012. He stated that his vendors purchased the above land under agreement of sale dated 24.02.2010 from one Bharatham Ram Kumar S/o late Veeraiah and late Kistamma. He further stated that Bharatham Kistamma W/o Veeraiah purchased the above land under registered sale deed dated 23-10-1978 bearing document No.976 of 1978 from Bhukya Dasru S/o Lalu Nayak and Bhukya Chandri W/o late Bhukya Tulsya. He gave xerox copies of the above agreement of sale deed and registered sale deed to respondent No.5 herein. The said documents were also filed in WP (PIL) No.195 of 2020 on the file of the Hon'ble High Court for the State of Telangana, case pending. The said Bharatham Ram Kumar S/o Veeraiah obtained legal heir certificate to succeed the properties of late Bharatham Kistamma w/o late Veeraiah from the Mandal Revenue Officer, Tirumalagiri Mandal, Hyderabad District.**

#### **Argument of Revision Petitioner**

The 5<sup>th</sup> Respondent either in his affidavit filed in WP (PIL) No.195/2020 or in the petition dated nil, filed before the 1<sup>st</sup> respondent, not at all pleaded that, these documents were given to his custody by the Revision Petitioner on his demand. For the first time the 5<sup>th</sup> Respondent is stating such contra to his earlier pleadings. Therefore, said new version of concocted story by the 5<sup>th</sup> Respondent that "the custody of such documents were given to him by the Revision Petitioner" cannot be considered with any force or credence under Law and said contentions are barred under the principle of Law of Estoppel under Sec.115 of the Indian Evidence Act. The Revision Petitioner herein submits that those documents are fabricated one by the 5<sup>th</sup> respondent in order to discharge his speculative desires with the malafide intention to obtain wrongful gain for himself and to cause wrongful loss to the Revision Petitioner and further the contents in those documents are self contradictory and cannot be taken into consideration, unless & until their originals are produced and their genuineness, validity or otherwise determined by the competent Civil Court in a regular civil suit. It is for the 5<sup>th</sup> Respondent to furnish the originals in order to adjudicate anything on the basis of those documents.

Therefore, prayed the Hon'ble authority to consider and upheld that the impugned order was passed by the 1<sup>st</sup> Respondent in the absence of any documentary evidence against this revision petitioner establishing that he is in possession of the subject land in contravention of the provisions of Telangana Scheduled Areas Land Transfer Regulation 1/1959 r/w 1/1970 and further without any enquiry as contemplated under the Regulation.

(Contd....27)

**vii) Contention of R5**

**That Bhukya Ram Kumar S/o Veeraiah and heirs of late Bhukya Tulsya and late Bhukya Dasru entered into a settlement agreement dated 21.11.2007.**

**That Bharatham Ram Kumar S/o late Veeraiah entered into another agreement of sale dated 02.11.2008 with one Shakamuri Satish Kumar S/o Satyanarayana pertaining to land bearing Sy.No.48/1A, 1200 sq.yds situated at Chunchupalli village, Bhadradri-Kothagudem District.**

**All the documents, copies of above documents were furnished by the revision petitioner herein only.**

**That the respondent No.5 herein filed a petition to the Special Deputy Collector, Bhadrachalam stating that there is violation of Regulation 1959-1970 and illegal construction without permission and to initiate action under the Regulation. The Revision Petitioner cannot claim to be in possession of the lands prior to 03-02-1970.**

**The Special Deputy Collector, had initiated LTR case No.84/2020/KGM against Vukanti Gopal Rao S/o Subba Rao for land bearing Sy.No.48/1A to an extent of 1200 sq.yds situated at Chunchupalli village, Bhadradri-Kothagudem District. The Notice was served on the Revision Petitioner and also intimated on his mobile phone about the date of hearing of the above case. Thus, the Revision Petitioner had sufficient notice and knowledge of the case and its hearing. The Revision Petitioner failed to file any documents to rebut the presumption laid down under section 3 (1) (b) of the Scheduled Area Land Transfer Regulation 1959 and 1970.**

**Argument of Revision Petitioner**

In addition to the contentions made under (a) to (d) of the Reply/Objection of Revision Petitioner to Remarks (v) SDC (TW), the contention of the Revision Petitioner is that the question of appearance and consequent act of failure or appearance of the revision petitioner arises, in case, had if the 1st respondent caused to serve any Notice on the revision petitioner by giving respect to the principles of natural justice or in the manner as prescribed under Rule-7 (1) & 7 (2) r/w Rule-10 of the Scheduled Areas Land Transfer Rules, 1969. But the 1st Respondent failed to get served any such notice(s) on the revision petitioner in compliance of Rule 7(1) & (2) r/w Rule-10 of the LTR Rules. On the other hand, the 1<sup>st</sup> respondent though the records before him establishing that the notice(s) issued by him not at all served on the revision petitioner, has observed

arbitrarily & hastily that as if the notices under Rule 7(1) & (2) were served in the manner as specified in rule-10 in a mechanical manner. Therefore, the impugned order under revision is liable to be set aside and the 1<sup>st</sup> respondent is put to strict proof contra to above.

**viii) Contention of R5**

**The Revision Petitioner filed the revision petition No.433 of 2021 on the file of the Revisional Authority on 25-03-2021 along with new fabricated documents such as (i) Will dated 27.02.2003, (ii) ryothwari pass book (iii) receipt dated 16.07.2019 and 15.09.2016. These documents are not filed before primary authority and cannot be looked by Revisional Authority as per the decision of our Hon'ble High Court held in Kurra Buchamma and another Vs Government of AP, Social Welfare Department (Tribal Welfare) and others reported in 2006 (3) ALT 591.**

**Argument of Revision Petitioner**

It is submitted that in this revision petition, both the 1<sup>st</sup> respondent as well as the 5<sup>th</sup> respondents not only submitted their contentions in the parawise remarks as well as in the counter affidavit, with new version of facts which are contra and beyond to the observations/findings in the impugned order under revision dated 09-02-2021 as well as to the contents of the petition submitted before the 1<sup>st</sup> respondent & even in the affidavit filed in the WP (PIL) No.195/2020 respectively, but also come with some other documents to which the revision petitioner is not a party and are fabricated xerox copies.

It is the settled law as contended by the 5<sup>th</sup> respondent that the revision authority should confine to the record only. But in the present case, the 1<sup>st</sup> respondent without affording any opportunity to the revision petitioner, without issue of requisite mandatory notices and without enquiry passed the order by illegally exercising the powers under Sec.3(2)(a) of the Regulation in a hurried manner. Therefore, having no other go, the petitioner has to submit the material documents establishing his possession over the subject property is under testamentary succession but not by way of transfer in contravention of the provisions of Regulation.

Therefore, it is submitted that, as held by the Hon'ble High Court in the decision reported in 2006(3) ALT 591 in Kurra Buchamma Vs Government of AP this Hon'ble Authority should be precluded to consider the new set of facts and the fabricated xerox copies of the documents intended to rely upon by the 5<sup>th</sup> Respondent or the 1<sup>st</sup> Respondent.

Applying above decision of the Hon'ble High Court reported in 2006(3) as urged by the 5<sup>th</sup> Respondent, the one and only

point or issue remain for consideration and determination by this Revision Petitioner is that:

Whether the Special Deputy Collector (TW), Bhadrachalam (Respondent No.1) committed any illegality or irregularity in entertaining the representation / petitioner / application of the unofficial 5<sup>th</sup> respondent herein (who is a stranger and third party to the subject property and being a un-interested and unconcerned person relating to the subject property of the list) by initiating LTR Case No.84/2020/CCP showing the 5<sup>th</sup> respondent as petitioner and passed the order dated. 09-02-2021 without enquiry as contemplated under Sec. 3(2)(a) of Regulation r/w. Rule 7 of the Land Transfer Rules-1969, and exercised his powers illegally and contra to said provisions of law and in violation and utter disregard of the principles of natural justice?

The very perusal of the impugned order under Revision with reference to the connected records exfacie establish that, the impugned order dated 09-02-2021 was issued by the 1<sup>st</sup> respondent in a hurried manner, without communicating any Notice as contemplated under Sec. 3 (2)(a) of the Regulation r/w Rule-7 of the Rules, without enquiry, without affording any opportunity of being heard, without any intimation to the Revision Petitioner and thus committed gross violation of principles of natural justice. Therefore, the impugned order dated 09-02-2021 in LTR Case No.84/2020/CCP is liable to be set aside irrespective of the merits and demerits of the factual matrix of the case.

#### **ix) Contention of R5**

**That the Will deed dated 27.02.2003 is in contrary to earlier agreement of sale furnished by the Revision Petitioner. That form XIV (Rule-14) & form No.15 (Rule 11-(2)) of the Notaries Rules, 1956 are not found in the office of Registrar, Khammam and Sub-Registrar Office, Kothagudem, so far. Petitions filed for issue of certified copies are pending. Also filed petitions in Sub-Registrar Office, Kothagudem to issue certified copies of registered documents pertaining to Kola Arjun Rao and his vendor and the same are pending. The Will deed is a fabricated document with the help of alleged attestors more particularly the 1<sup>st</sup> attestor the clerk of Notary Advocate and friend of Revision Petitioner. The Notaries Act, 1952 and Rules, 1956 are not applicable to schedule agency areas in view of section 3 (1) (a) of Scheduled Area Land Transfer Regulation 1959 & 1970. Section 2 (g) of the Regulation 1959 does not recognize the Will as a transfer since it is in violation of section 3 (1) (a) of the Regulation 1959 & 1970 and its object.**

### **Argument of Revision Petitioner**

The question of execution of will by a testator/executor arises, when he desires that, his personal property should be disposed of otherwise than under general succession in favour of his/her class-I legal heirs and wish to dispose of it specifically among certain particular person(s) of his Class-I legal heirs fall under general succession or to totally avoid the general succession of his class-I legal heirs and thereby to dispose of it in favour of a third party who might be a stranger to the family or other relative for his own reasons/causes.

Further, if at all any dispute or doubt in respect of the subject Will should be expressed or claimed at the option of the Class-I legal heirs of the testator or other person interested over the subject property of the Will, that too within a period of three years from the date of knowledge or consequent implementation of the Will by the beneficiary. But in the present case, the Will in favour of the petitioner in respect of the subject land was implemented long back by the family members of the testator including her Class-I legal heirs.

Therefore, the 5<sup>th</sup> Respondent being a stranger & third party to the family and being an uninterested person in respect of the subject land, and the 1<sup>st</sup> respondent being an adjudicating authority has no cause of action or jurisdiction to raise any dispute or express doubt at their whims and fancies. Further, it is submitted that, the adjudicating authorities have no jurisdiction to go into the merits and demerits or the genuineness or otherwise of the Will, which should be within the jurisdictional limits of the competent Civil Court.

### **x) Contention of R5**

**The section 3 (1) (a) of the Regulation 1959 and 1970 held that any transfer of immovable property in scheduled Agency Area by non tribal in favour of non tribal after 03-02-1970 is null and void. Hence, the registered documents dated 23.10.1978 document No.976/1978 is null and void and its contents cannot be looked into for any purpose. The Revision Petitioner submitted that as per registered documents, its contents show 1969 as the transaction. The Revision Petitioner failed to file any documents independently to show the transaction took place in 1969 or prior to 03-02-1970. It was fraudulently mentioned as 1969 to defeat the object of the Regulation, which is null and void. The pahanies, registered documents show Bhukya Tulsya already sold the land to the third person. Hence, any of his heirs cannot sell the same land without any right to Bharatham Kistamma W/o Veeraiah or any other person. The Revision Petitioner cannot get any right in this subject land.**

(Contd....31)

**The revision petitioner violated the Regulation. The Revision Petitioner failed to file single documents to show Bharatham Kistamma was in possession prior to 03-02-1970 or after 03-02-1-970. The receipts dated 15.9.2019 are fabricated with the help of Bill collector D.Amarnath and then Panchayat Secretary, Gram Panchayat, Vidya Nagar colony, receipts do not confer any right in the property to the revision petitioner. The Will deed does not confer any right to the Revision Petitioner since Bharatham Ram Kumar S/o Veeraiah also claimed as illegal heir and succeeded his mothers monies and properties if any.**

**Argument by Counsel for Revision Petitioner**

With regard to the contentions of the 1<sup>st</sup> respondent as well as the 5<sup>th</sup> respondent that the registered sale deed dt. 23-10-1978 is not valid and hit by Regulation – it is submitted that the scope of enquiry under the Regulation is to be confined to the extent of deciding **“Whether the Revision Petitioner or his testator are found in possession of the subject land under any transfer affected after the commencement of the Regulation 1/1959 r/w 1/1970 or prior to that ?**

In the 1<sup>st</sup> page of the registered sale deed dated 23-10-1978, 11 to 15 lines read as under:

“ That in order to meet our domestic needs , we have sold the scheduled mentioned house site plot in the year 1969 for consideration of Rs.9600/- to meet our domestic needs and delivered the possession on receipt of said amount of Rs.9600/- and continued to be in your possession.

Similarly, in the 2<sup>nd</sup> page of registered sale deed dt. 23-10-1978 the 2<sup>nd</sup> and 3<sup>rd</sup> lines read as under:

“as the Scheduled Property continues to be with your possession , you are entitled to enjoy the same with all rights of succession , sale etc., In the same page, the 8<sup>th</sup> line reads that “ you are alone paying all the cist & tax to the Government and to the panchayat it can be mutated on your name in the village accounts. It is further mentioned that, the deed was executed under the belief that except the sale in your favour there are no other sort of encumbrances.

In the present case, neither the Revision Petitioner nor his testator claiming or claimed possession under the registered sale deed dated 23-10-1978, but they are relying on the said deed for corroborative purposes to establish the possession from the recitals of the deed, wherein it is clearly mentioned that the possession of the property was delivered to the testator of the Revision Petitioner during the year 1969 on receipt of entire sale consideration, and that the sale deed was executed and got it registered on 23-10-1978. Therefore, it should be construed

(Contd....32)

that, the possession of the subject property was transferred in favour of the testator of the Revision Petitioner in the year 1969 and that while continuing in possession since 1969, the testator got the said sale transaction registered in her favour. Since the registered document dated 23-10-1978 was executed 42 years ago from the date of execution and 52 years ago from the time of possession and no dispute arisen, the 5th respondent being a stranger and third party to the said document as well as to the subject property, has no locus standi to raise any dispute at his whims and fancies. The original registered sale deed dated 23-10-1978 and the ryot pass book issued by the Tahsildar during the year 1979 as well as the Will deed executed by her are in the custody of this Revision Petitioner. Since the registered sale deed is proved to be executed in the year 1978 which is beyond 30 years old, by virtue of Sec. 90 of the Indian Evidence Act, the said deed and its contents/recitals should be presumed as genuine and true.

In the decision reported in **2005(2) ALD page-482** in WP No.1952/1997 between Dasari Suryachandra Rao & others Vs Mandal Revenue Officer, Devipatnam & others, while considering the recitals of the registered sale deed dated 22-04-1970 in document No.499/1970, the Hon'ble High Court taking into consideration of the ratio decidendi in the decision reported in 1995(3) ALD 222 = 1995(3) ALT in Kakarla Nageswara Rao Vs. Government of A.P., & others, held that, primary authority failed to apply its mind to recitals in the sale deed in question, wherein reference was made to agreement of sale dated 15-10-1969 and delivery of possession pursuant thereto – Failure of primary authority record intelligible reasons, the order is not sustainable (para-9).

The Hon'ble High Court in para-8 of its decision supra, while referring decision of the Hon'ble Supreme Court of India reported in **AIR 1996 SC 224** in S. Venkata Ramanaiah Vs State, reiterated verdict of the Hon'ble Apex Court, wherein it is held that, "Even assuming for the sake of argument that the transferee was in illegal possession prior to coming into force of the Regulation, the Special Deputy Collector has no jurisdiction to evict them by invoking section 3(1)(a) and 3(2)(a) as the transaction was not encompassed by sweep of Sec. 3(1)(a).

The Hon'ble High Court in its decision reported in **2009(2) ALD 651** in WP No.14248/2001 between V.R. Koteswara Rao Vs. Government of A.P. and others, the factual matrix are that, the possession was took place under agreement of sale dated 15-11-1968 and sale deed was executed on 18-10-1972. The authorities taken the view that the agreement of sale is not genuine and the actual registered sale deed which took place on 18-10-1972 is void and accordingly passed the eviction vide G.O.Ms No.87 & G.O.Ms.No.54 dated 26-09-2000 and 24-05-2001. The Hon'ble High Court in para-10 & 12 held that, all the authorities were of the view that, the date of actual sale deed alone becomes material, such a view is contrary to law



particularly when the agreement of sale dated 15-11-1968 was admitted by the vendor and in para-8 of the order the Hon'ble Court further held that, transfer includes contract for sale. In this case, the contract of sale took place in the year 1969; sale consideration was received by the vendor/owner and put the testator of the Petitioner in possession in the year 1969. Therefore, it must be construed that the actual transfer took place in respect of the subject property in the year 1969 which is prior to the commencement of the Regulation 1/1970. Therefore, it is submitted that, the 5<sup>th</sup> respondent being a stranger to the transaction as well as to the subject property has no locus standi to dispute either the sale deed or the recitals therein evidencing the possession.

The Hon'ble High Court in another case **reported in 2006(2) ALD 683** in WP No. 17318/2006 between Kalagara Vigneswara Rao Vs. Government of A.P. & others, while considering the factual matrix that the possession delivered under agreement of sale dated 02-05-1969 and sale registered on 14-09-1975, held that, purchase as much as was done on 02-05-1969 and said transfer is not hit by Regulation. Further considering the contentions of the Government that the agreement of sale itself is compulsorily registerable one, and since the subject agreement of sale is not registered the transaction is void. The Hon'ble Court held that, so far agreement of sale relating to immovable properties is concerned, at that point of time, the registration was not compulsory and it was made compulsory w.e.f., 01-04-1999 under the amending Act 4 of 1999.

In the present case, the recital of the sale deed goes to show that the transaction was completed in the year 1969 against receipt of entire sale consideration followed by delivery of possession. Though the sale deed executed and registered on 23-10-1978 by the vendors therein, on that date neither the subject land was in their possession nor they received the sale consideration, on the other hand the property was in the possession and enjoyment of the testator. The vendors have specifically mentioned said facts by declaring that the entire sale consideration was received and possession delivered in the year 1969 itself and further declared and admitted that the vendee/testator of the Revision Petitioner continuing in possession. Therefore, as held by the Hon'ble High Court in para-19 of it's decision reported in **2009(1) ALT 256** in WP No. 19164/2007 in Dr. Yadla Ramesh Naidu Vs Sub Registrar, Sabbavaram, mere registration of a document by the registering authority does not confer any title and that the registration of a document merely records sale transaction between the parties. Therefore, it should be considered that the registered sale deed dated 23-10-1978 is a document which recorded the transaction and delivery of possession took place during the year 1969.

The Regulation did not provide anything by enacting that, "a person belongs to non tribal community found in possession

with title over the immovable property alone should be allowed to continue in possession and that all the other belongs to non tribal community found in possession without title should be ejected, irrespective of the fact that they are being in continuous possession since prior to the commencement of the Regulation 1/1970.

Hence, prayed that to declare that, the transfer in respect of the subject property in favour of the testator of the revision petition took place in the year 1969 but not on 23-10-1978 i.e., the date of execution of the sale deed and its registration. Hence, the possession of the testator of the revision petitioner is not in contravention of the provisions of Regulation 3 (1) (a), and therefore not come within the scope and purview of Sec. 3(2)(a) of the Regulation 1/1959 r/w 1/1970.

#### **xi) Contention of R5**

**The Hon'ble Supreme Court held that date of commencement of registered sale deed commences from its date of execution only as per section 47 and 75 (2) Registration Act. Hence, revision petitioner cannot claim registered sale deed documents dated 23-10-1978 to commence from 1969 and reported in 2002 (2) SCC 611 & 612.**

#### **Argument of Revision Petitioner**

The 1<sup>st</sup> Respondent failed to appreciate that neither the Revision Petitioner herein nor his predecessor in possession claiming possession under the transfer effected in pursuant to the registered sale deed dated 23-10-1978 nor contending that their possession over the subject immovable property was acquired by virtue of the sale deed dated 23-10-1978. When the deed itself is explanatory with regard to the delivery of possession, in the absence of any dispute between the original vendor and the purchaser with regard to the delivery of possession for the past about 42 years from the date of execution of registered sale deed and about 52 years from the date of delivery of possession, the 1<sup>st</sup> Respondent has no cause of action under the Regulation 1/1959 r/w 1/1970 to initiate, adjudicate and pass decree of ejectment against the Revision Petitioner.

The recital of the sale deed goes to show that the transaction was completed in the year 1969 against receipt of entire sale consideration followed by delivery of possession. Therefore, it should be considered that the actual transfer of possession in respect of the subject property was took place in favour of the testator of the petitioner in the year 1969 but not on 23-10-1978. Therefore, as held by the Hon'ble High Court in para-19 of it's decision reported in **2009(1) ALT 256** in WP No.19164/2007 in Dr. Yadla Ramesh Naidu Vs Sub Registrar, Sabbavaram, mere registration of a document by the registering authority does not confer any title and that the registration of a

document merely records sale transaction between the parties. Hence, it should be considered that the registered sale deed dated. 23-10-1978 is a document which recorded the transaction and delivery of possession took place during the year 1969.

In view of following decisions of the Hon'ble High Court and the Hon'ble Supreme Court, the term transfer is to be considered as, from the date of delivery and for the purpose of passing of title, the date of execution and registration is to be considered, and even without having title, the person who took possession can continue and protect his possession independently by acting as it's owner and can enjoy the proceeds of the income derived thereon.

- (a) **2005(2) ALD page-482** in WP No. 1952/1997 between Dasari Suryachandra Rao & others Vs. Mandal Revenue Officer, Devipatnam & others, while considering the recitals of the registered sale deed dated. 22-04-1970 in document No. 499/1970, the Hon'ble High Court taking into consideration of the ratio decidendi in the decision reported in 1995(3) ALD 222 = 1995(3) ALT in Kakarla Nageswara Rao Vs. Government of A.P., & others, held that, primary authority failed to apply its mind to recitals in sale deed in question, wherein reference was made to agreement of sale dated. 15-10-1969 and delivery of possession pursuant there to – Failure of primary authority record intelligible reasons, the order is not sustainable (para-9).
- (b) The Hon'ble High Court in para-8 of its decision supra, while referring the decision of the Hon'ble Supreme Court of India reported in **AIR 1996 SC 224** in S. Venkata Ramaiah Vs. State, reiterated the verdict of the Hon'ble Apex Court, where in it is held that, " Even assuming for the sake of argument that the transferee was in illegal possession prior to coming into force of the Regulation , the Special Deputy Collector has no jurisdiction to evict them by invoking section 3(1)(a) and 3(2)(a) as the transaction was not encompassed by sweep of Sec. 3(1)(a).
- (c) The Hon'ble High Court in it's decision reported in **2009(2)ALD651** in WP No. 14248/2001 between V.R. Koteswara Rao Vs. Government of A.P., and others, the factual matrix are that, the possession was took place under agreement of sale dated. 15-11-1968 and sale deed was executed on 18-10-1972. The authorities taken the view that the agreement of sale is not genuine and the actual registered sale deed which took place on 18-10-1972 is void and accordingly passed the eviction vide G.O.Ms.No.87, & G.O.Ms. No. 54 dated. 26-09-2000 and 24-05-2001. The Hon'ble High Court in para-10 & 12 held that, all the authorities were of the view that, the date of actual sale deed alone becomes material, such a view is

contrary to law particularly when the agreement of sale dated. 15-11-1968 was admitted by the vendor and in para-8 of the order the Hon'ble Court further held that, transfer includes contract for sale. In this case, the contract of sale was took place in the year 1969, sale consideration was received by the vendor/owner and put the testator of the petitioner in possession in the year 1969. Therefore, it must be construed that the actual transfer took place in respect of the subject property in the year 1969 which is prior to the commencement of the Regulation 1/1970. Therefore it is submitted that, the 5<sup>th</sup> respondent being a stranger to the transaction as well as to the subject property has no locus standi to dispute either the sale deed or the recitals therein evidencing the possession.

- (d) The Hon'ble High Court in another case reported in 2006(2) ALD 683 in WP No. 17318/2006 between Kalagara Vigneswara Rao Vs Government of A.P. & others, while considering the factual matrix that the possession delivered under agreement of sale dated. 02-05-1969 and the sale deed was obtained and registered on 14-09-1975 held that, purchase as much as was done on 02-05-1969 and said transfer is not hit by Regulation. Further considering the contentions of the Government, that the agreement of sale itself is compulsorily registerable one and since the subject agreement of sale is not registered the transaction is void. The Hon'ble Court held that, so far agreement of sale relating to immovable properties is concerned, at that point of time, the registration was not compulsory and it was made compulsory w.e.f., 01-04-1999 under the amending Act 4 of 1999.
- (e) The Hon'ble High Court of AP reported in 2002 (5) ALD 398 = 2003 (1) ALT 182 between Sri Bhavanarishi Cooperative Cop-operative vs Joint Collector, the Hon'ble High Court while considering the term "transfer" for the purposes under Sec.5-A of the ROR Act 1971, in para-38 relied upon decision of the Hon'ble Supreme Court of India reported in AIR 1992 SC 195 = 1992 (1) SCC 77 in Pandey vs Ramchandra, held that, transfer includes oral sale also within its fold. Further, in para 40, the Hon'ble Supreme Court considering the possession and enjoyment of an assessee under registered sale deed held that Sec.54 of Transfer of Property exclude the conferment of absolute title by transfer. However, would not take away the right of the assessee to remain in possession of the property to realize and receive the rents and profits there-from and appropriate the entire income for its own use. The so called vendors not permitted in law to dispossess or to question title of the assessee.

**xii) Contention of R5**

**The Hon'ble High Court for the State of Telangana held third party is also interested persons under the Regulation 1959 and 1970. It is reported in 2003 (3) ALT 453 to 455 (paragraphs No.7).**

**Argument by Counsel for Revision Petitioner**

The contention of the 5<sup>th</sup> Respondent is not correct and that the *ratio decidendi* in the decision of the case referred by him is relating to "applicability of principle of Resjudicata" to the adjudications under the Regulation. Further, the decision not at all disclose about the adjudication of any issue relating to the meaning of expression "person interested" used in the Regulation or the persons who are having right to submit petitions, applications and representations for initiation of LTR cases under the Regulation. The Hon'ble High Court in para 7 not held as contended by the 5<sup>th</sup> Respondent that a third party is also interested person under the Regulation. In para-7 of the decision, the observation of the Hon'ble High Court is that "it is true that Regulation enables not only Special Deputy Tahsildar but even any third person to submit complaints about the contravention of the Regulations". Said observation is only *obiter dicta* (an expression of opinion but not essential to the judgement) and hence not binding as precedent. Therefore, the observations of the Hon'ble High Court in para-7 is not applicable to give a meaning that interested person means & includes third party who is having no concern with the subject property of the lis.

In the present case, the 5<sup>th</sup> Respondent not belongs to Scheduled Tribe Community and also not claiming any easement or tenancy rights in respect of the subject land. The 5<sup>th</sup> Respondent also not contended that, by the reason of the possession of the Revision Petitioner in the subject property and consequent construction of building being carried, the his primary source of livelihood is being affected adversely in any manner. Then the question remain is for what purpose the 5<sup>th</sup> Respondent submitted petition with false, frivolous and fabricated documents and invoked jurisdiction of the 1<sup>st</sup> Respondent. The 1<sup>st</sup> Respondent not conducted any enquiry and mechanically taken cognizance of his petition, initiated proceedings and passed order dated 09-02-2021 arbitrarily and in violation of principles of natural justice.

The Revision Petitioner contends that the H.No. 4-3-80/1 in which 5<sup>th</sup> Respondent is residing stands on the name of his father and the 5<sup>th</sup> Respondent himself is claiming ownership against H.No. 4-3-81/1 and paying taxes to the Gram Panchayat, both are located in Sy.No.137/1 of Chunchupalli Revenue village, which is an absolute Government Land and that the Government not assigned said site to the 5<sup>th</sup> Respondent for the reason he belongs to non tribal community and not entitled under the Regulation to have possession of any

(Contd....38)

immovable property in the Scheduled Area. The Revision Petitioner filed copy of the letter dated 13-08-2021 in Rc.No. B/645/2021 issued by the Public Information Officer, O/o Tahsildar, Chunchupalli to one Sri Kanjarla Rama Rao S/o. Jagannadham, Nala Area, Rudrampur, Chunchupalli Mandal under the provisions of Right to Information Act.

Similarly, the 4<sup>th</sup> Respondent herein (Gram Panchayat Secretary, Vidyanagar Colony Gram Panchayat, vide his letter in Rc. No. 63/2021 dated. 30-07-2021 furnished information under the RTI Act stating that, the total houses situated within the limits of the Gram Panchayat are 2755 among them 256 belong to Tribes and 2499 belong to non-tribes, 64 buildings are now under construction and that for said construction Gram Panchayat not issued building construction permission either prior to the commencement of the Gram Panchayat Act, 2018 or after, but refusal was done in respect of only one building construction and that the Gram Panchayat not demolished the buildings which were constructed without construction permission. He further informed that no single construction was made & covered by construction permission issued by the Gram Panchayat. no construction permissions were issued, no construction fee levied/collected and also stated that no format of application for construction of building permission maintained or prescribed in the Gram Panchayat.

From the above information, it is establishing and giving an understanding that the 5<sup>th</sup> Respondent himself being a Ward Member and resident of Scheduled Area of Vidyanagar Colony, and within it's panchayat limits contravening provisions of the Regulation 1/1959 encroached into Government land in Sy.No.137/1 and constructed a building without obtaining construction permission. Being a violator of the provisions of the Regulation 1/1959 r/w 1/1970 and contra to his acts, he is falsely contending that he submitted petition before the 1<sup>st</sup> Respondent against this Revision Petitioner for implementation of the Regulation in the interest of tribals.

There is no good faith on the part of the 5<sup>th</sup> Respondent in his approach as stated supra and being an uninterested person in respect of the subject property against the Revision Petitioner.

For these reasons alone and in order to avoid any sort of litigations for the speculative desires & black mailing tactics, to satisfy personal or political revenges with dishonest and malafide intentions, the legislature while enacting the Regulation confined the right to invoke jurisdiction of adjudicating authorities under the Regulation by specifically using the expression " anyone interested " (in respect of the property of the lis) and in addition to that, in the interest of justice conferred such right on a public servant and further empowered the suo motu powers of initiation on the 1<sup>st</sup> Respondent as well as upon the Agent to the Government.

**xiii) Contention of R5**

**The Revision has to be conducted by the Secretary to Government under Article 300-A of the Constitution of India and section 79 & 80 C.P.C. and AIR 2003 SC 1865.**

**Argument of Revision Petitioner**

Article 300A reads as "Persons not to be deprived of property save by authority of law".

Section 79 of Code of Civil Procedure 1908 "Suits by or against Government":

In a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be, shall be-

(a) in the case of a suit by or against the Central Government, the Union of India, and

(b) in the case of a suit by or against a State Government, the State.

Section 80 of Code of Civil Procedure 1908 "Notice":

(1) Save as otherwise provided in sub-section (2), no suits shall be instituted against the Government (including the Government of the State of Jammu & Kashmir) or against a public officer in respect of any act purporting to be done by such officer in his official capacity, until the expiration of two months next after notice in writing has been delivered to, or left at the office of-

In view of the above, the decision is pertaining to the controversies between internal departmental issues and filing of suit or other proceedings which is no way connected to this Revision Petition.

**xiv) Contention of R5**

**The property is already seized by Government in compliance of the orders dated 29.06.2021 made in W.A.No.166 of 2021 on the file of the Hon'ble High Court.**

**Argument of Revision Petitioner**

The contentions of the unofficial 5<sup>th</sup> Respondent in his counter affidavit are ambiguous, vague and contra to his pleadings in his petition/application filed before the 1<sup>st</sup> Respondent and has come before the Hon'ble Authority with new set of facts together with some other documents. The 5<sup>th</sup> Respondent admitted that, he filed WP (PIL) 195/2021 on the file of the Hon'ble High Court which is pending. The counsel

(Contd....40)

counsel of the 5<sup>th</sup> Respondent filed another W.P.No.4645/2021 representing one Bhukya Janardhan as Petitioner (which is not disclosed by the 5<sup>th</sup> respondent). This Revision Petitioner filed Writ Appeal No.166/2021. All the Writs and the Writ Appeal are pending as on date and none of them are connected with the LTR Case No.84/2020/CCP on the file of neither the 1<sup>st</sup> Respondent nor this Revision Petition. The subject matter of the Writ Petitions and the Writ Appeal are relating to the proposed construction intended to be raised by the Revision Petitioner in the subject property. There is no stay or such other directions by the Hon'ble High Court affecting the hearing or disposal of this Revision Petition. Except a direction in the Writ Appeal to keep the building under construction with the Gram Panchayat custody until further, giving liberty to the Revision Petitioner to file an Appeal before the appropriate authority against the alleged non-communicated refusal to grant building permission.

10. Government have examined the documents submitted by Respondent. 5 (Sri Balagam Sridhar) and the Revision Petitioner (Vukanti Goapala Rao) and arrived at the observations noted against each:

Respondent 5:

- i) Pahani 1959-60 – Sy.No.48/1A is Chalka patta with an extent of acs.2.00 in the name of Bhukya Tulsya as Pattedar.

Observation: This is not in dispute by both the parties.

- ii) Pahani 1962-63 – Sy.No.48/1A for an extent of acs.2.00 in the name of Bhukya Tulsya as Pattedar. Names of Bandi Ramaiah and Dasru shown in enjoyer column @ 1.00 acre each.

Observation: No narration by the Respondent with regard to enjoyers Bandi Ramaiah and Dasru.

- iii) Pahani 1963-64 – Sy.No.48/1A – 2.00 acres – Bhukya Tulsya pattedar – Bandi Papaiah was enjoyer.

Observation: No narration by the Respondent with regard to enjoyers Bandi Ramaiah and Dasru.

- iv) Pahani 1967-68 – Sy.No.48/1A – 2.00 acres – Bhukya Tulsya pattedar – Kola Arjun Rao was enjoyer.

Observation: Enjoyment details of Kola Arjun Rao not furnished.

- v) Pahani 1972-73 – Sy.No. and extent not found – Bhukya Tulsya pattedar – Kola Arjun Rao in enjoyer column as Khareedu.

Observation: Enjoyment details of Kola Arjun Rao not furnished.

- vi) Pahani 1976-77 – Sy.No.48/1A – extent 2.00 acres – Pattedar Bhukya Tulsya – enjoyer's column 1) Thammisetty Radha and 2) Thammisetty Nageswara Rao @ 1.00 each – purchased from

(Contd....41)



Kola Arjun Rao by Thammisetty Radha W/o Nageswara Rao for Rs.5000 by registration on 11.12.1974 and from Kola Arjun Rao by Thammisetty Nageswara Rao S/o Ramalingam for Rs.5000 by registration on 11.12.1974.

Observation: Sale deeds relied upon do not contain survey number – therefore, the pahani is contra to the sale deeds.

- vii) Pahani 1977-78 – Sy.No.48/1A – extent 2.00 acres – Bhukya Tulsya pattedar – name of Bandi Ramaiah was shown in enjoyment column.

Observation: Self contradictory to the pahanies of 1962-63, 1963-64, 1967-68, 1972-73 and 1976-77. Similarly, pahanies of 1983-84, 1987-88 are contradictory to the enjoyment column of pahani of 1977-78.

- viii) Pahani 1983-84 – Sy.No.48/1A – extent 2.00 acres – Bhukya Tulsya pattedar – names of Thammisetty Radha and Thammisetty Nageswara Rao were shown in enjoyment column @ 1.00 acre each & Pahani 1987-88 – Sy.No.48/1A – extent 2.00 acres – Bhukya Tulsya pattedar – names of Thammisetty Radha and Thammisetty Nageswara Rao were shown in enjoyment column @ 1.00 acre each.

Observation: Contrary to 1977-78 pahani entries.

- ix) Pahani 2001-02 – Sy.No.48/1A – extent 2.00 acres; Pahani 2002-03 – Sy.No.48/1A – extent 2.00 acres; Pahani 2003-04 – Sy.No.48/1A – extent 2.00 acres; Pahani 2004-05 – Sy.No.48/1A – extent 2.00 acres; Pahani for 1422 Fasli (2012 year) – Sy.No.48/1A – extent 2.00 acres; Pahani for 1427 Fasli (2017 year) – Sy.No.48/1A – extent 2.00 acres:

Observation: No names were shown in enjoyment column - therefore, presumption is that pattedar is in possession which are contradictory to previous pahani entries.

- x) Dharani Portal – Sy.No.48/1 for the extent of 2.00 acres shown as Government land in Chunchupalli (U) village.

Observation: Contradictory to all the above pahani entries.

- xi) Document No.1951 of 1974, dt.11.12.1974 by Kola Arjun Rao S/o Narayanaswamy, aged: 46 years, occ: Contractor, R/o Palvantha, Kothagudem Taluq – in favour of Thammisetty Radha W/o Nageswara Rao, aged: 22 years, occ: household R/o Kothagudem – for a sale consideration

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of Rs.5,000/- - towards sale of immovable property i.e. open land measuring 4046.86 sq.mts with thatched house bearing H.No.6-91 constructed in it in the year 1969 and situated within the following boundaries:

East : Bhukya Tulsya  
West : Bhadrachalam Road  
North : Vacant land  
South : House site of T.Nageswara Rao  
&

Document No.1952 of 1974, dt.11.12.1974 by Kola Arjun Rao S/o Narayanaswamy, aged: 46 years, occ: Contractor, R/o Palvancha, Kothagudem Taluq – in favour of Thammisetty Nageswara Rao S/o Ramalingam, 32 years, occ: Business, R/o Kothagudem – for a sale consideration of Rs.5,000/- towards sale of immovable property i.e. open land measuring 4046.86 sq.mts with thatched house bearing H.No.6-91 constructed in it in the year 1969 and situated within the following boundaries:

East : Land of Bhukya Tulsya  
West : Khammam-Bhadrachalam Road  
North : Vacant land  
South : House site of T.Nageswar Rao

Observation:

Both the documents pertaining to sale of H.No.6-91 with appurtenant site of 1 acre each (total 2 acres) covered under same boundaries without survey number. Sri Bhukya Tulsya, pattedar of Sy.No.48/1A was shown on eastern side for these extents in both the documents – therefore, this land is located on the western side of the patta land of Bhukya Tulsya – and hence, these documents are not relevant to the present subject land of 1200 sq.yds.

- xii) Orders of SDC (TW) Bhadrachalam in LTR case No.31/2009/KGM, dt.6.10.2009.

Observation:

Kola Arjun Rao sold to Thammisetty Radha W/o Nageswara Rao and Thammisetty Nageswara Rao S/o Ramalingam an extent of each 4086.86 Sq. yards total measuring 8172 Sq. yards under registered sale deeds dated 11-12-1974 in document Nos. 1951/1974 and 1952/1974. The SDC (TW) initiated LTR case No. 31/2009/KGM against (1) Thallada Upendra Rao (2) Thota Mangamma (3) D.G. Prakasha Rao (died) represented by his sons D.W. Shakespear & Solmen Ramesh Babu (4) D.M.V. Kumari (5) Manubothula Govardhan (6) Saraswathi Madam @ Suwarna Rekha and (7) Bethalapudi Subba Rao

(Contd....43)

and passed order dated. 06-10-2009 directing Tahsildar, Kothagudem to take said property into Government custody. Thus, it is reflected as Government land in Dharani portal.

The Revision Petitioner contended that the above case is no way related to the subject matter of this Revision Petition. According to him, out of an extent of 2.00 acres (i.e. 9680 sq.yds), only 8172 sq.yds were said to have been sold to Thammisetty Radha and Nageswara Rao leaving 1,508 sq.yds on the eastern side of alleged sold land, as pattedar Bhukya Tulisya already sold an extent of 1200 sq.yds to the testator of the Revision Petitioner in the year 1969 itself. Further, the testator of the Revision Petitioner viz., Bharatham Kistamma or the extent of 1200 sq.yds is not part of the LTR case referred by the 5<sup>th</sup> Respondent.

- xiii) Xerox copies of Agreement of sale dated 24.2.2010, 1.1.2012, agreement of settlement dated 21.11.2007 and sale agreement (token advance receipt) dt.2.11.2008:

Observation: The Revision Petitioner contended that they are fabricated and forged Xerox copies pressed-in for wrongful gain. Respondent 5 also failed to produce originals. Hence, cannot be considered.

- xiv) Registered sale agreement dated 23.10.1978 - executed by 1) Bhukya Dasru S/o Lalunaik, 65 years, occ: agriculture R/o Chunchupalli village, Kothagudem Taluq, Khammam District & 2) Bhukya Chandri W/o Bhukya Tulasya, 55 years, occ: household R/o Kothagudem - in favour of Smt.Bharatam Krishnamma W/o Veeraiah, 40 years, occ: household R/o Netaji Market, Kothagudem village and Taluq - sale consideration Rs.9600/- - recited that the immovable property i.e. 1200 sq.yds situated in Sy.Nos.48/1 and 47/5 in Chunchupalli village situated within the following boundaries:

East : House of Ravella Sambasiva Rao  
West : Khammam-Kothagudem Road  
North : Houses of Vemulapalli Nageswara Rao, Bhaskar Rao  
South : Vacant land of Charugundla Madhavarao

Observation: The petitioner is relying upon to corroborate the possession of his testator from 1969 onwards as per the recitals therein.

- xv) Supreme Court Decision - (2002) 2 Supreme Court Cases 611 - Gurbax Singh - Petitioner and Kartar Singh & other - Respondents - SLP (C) No.1969 of 2002, decided on February 11, 2002

Observation: The contention of the Revision Petitioner is that so far as title is not concerned, the said decision is not applicable to the possession in the present case.

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- xvi) 2003 (3) ALT 453 (D.B.) IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD – WP Nos.4776 and 4832 of 2003 – decided on 31-3-2003 – N.Durga Rao and another v SDC (TW) Kota Ramachandrapuram, W.G.Dist and others.

Observation:

The Revision Petitioner contended that the **ratio decidendi** in the above decision relates to “**applicability of principle of Resjudicata**” to the adjudications under the Regulation. Further, the decision not at all disclose about the adjudication of any issue relating to the meaning of expression “person interested” used in the Regulation or the persons where having right to submit petitions, applications and representations for initiation of LTR cases under Regulation.

- xvii) 2006 (3) ALT 591 – IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH AT HYDERABAD – WP Nos.20481 of 1996 and 26172 of 1999 – Decided on 23.3.2006 – Kurra Butchamma and another Vs Govt of AP Social Welfare Department (Tribal Welfare) and others.

Observation:

The Revision Petitioner admitted that it is the settled law that the Revisional Authority should confine to the record only. But, in the present case, the SDC (TW) without opportunity to the Revision Petitioner passed orders, and as per the said record, there is no document establishing illegal possession of the Revision Petitioner. On the other hand, the 5<sup>th</sup> Respondent contrary to his pleadings before the SDC (TW), has come with new set of facts and fabricated xerox copies, which is against the above decision relied upon by the Respondent 5.

- xviii) AIR 2003 SUPREME COURT 1805 – Civil Appeal Nos. 8580 of 1994 with 9097 of 1995, dt.18.2.2003 - Chief Conservator of Forests, Govt.of AP-Appellant Vs Collector and others – Respondents –

Observation: No relevance to the present case as the decision relates to inter departmental issues.

- xix) a) WP No.4645 of 2021, dt.17.3.2021 filed by Bhukya Janardhan S/o Bhukya Laxman against Vukanti Gopal Rao & others;

b) WP No.11209 of 2021, dt.27.4.2021 filed by V.Gopal Rao against Dist.Panchayat Officer, B.Kothagudem and others; and

c) WA No.166 of 2021, dt.29.6.2021 filed by Sri V.Gopal Rao against Dist.Panchayat Officer, B.Kothagudem and others:

Observation: The subject matter of the Writ Petitions and the Writ Appeal are relating to the proposed construction

intended to be raised by the Revision Petitioner in the subject property. There is no stay or direction from the Hon'ble High Court in all the above (3) cases affecting hearing or disposal of this Revision Petition under the LT Regulation 1/1970.

- xx) Regd.Doc.No.1541 of 1974; order in LTR case No.119/KGM/83, dt.30.4.1987 of SDC (TW), Palwancha; order in CMA No.33 of 1983, dt.9.8.2021 of Agent to Government, Khammam; GO Ms.No.37, SW (LTR.2) Dept. dt.17.5.2007 and order dated 23.8.2016 in WP No.13495 of 2007:

Observation:

The Revision Petitioner contended that the fact finding authorities in those matters have considered decision of the Hon'ble High Court in CRP No.1086/1996 dated 10.8.1998 in Ramatulasamma vs Y.Masthanreddy & others taken up against order of the Civil Court at Nellore in O.S.No.284/1989. The issues in the said decision are not relating to the provisions of the LT Regulation but relate to the Evidence Act, Stamps Act & Registration Act. Therefore, the orders of the fact finding authorities basing on the decision in CRP No.1086/1996 cannot be considered as binding precedent with regard to the issues relating to facts and legal questions involved in this Revision.

The Revision Petitioner further contended that the *ratio decidendi* (the principle of law or reason for arriving the decision by the court) is laid in para 9 of the order dated 23.8.2016 which reads:

"The scope of judicial review on the matters arising out of quasi-judicial authorities is very limited. This Court cannot re-appreciate the evidence on record and come to different conclusion from the conclusion arrived at by the fact finding authority "

Similarly, the *ratio decidendi* is laid in para-13 of the order dated 02.08.2016, which reads:

"Scope of judicial review on such matter is very limited. The Court cannot re-appreciate the evidence on record or come different conclusion from the conclusion arrived by the fact finding authority".

Revision Petitioner:

- i) Rythu Pass Book in the name of Bharatm Kistamma W/o Veeraiah issued by Tahsildar, Kothagudem showing 2.00 acres and 2.18 acres in Sy.Nos.48/1 and 47/5 respectively in Chunchupalli village, patta in the name of Bhukya Tulisya sold 0.9¾gts for Rs.9600/- to Smt.Bharatm Kistamma through Regd.Sale Deed No.976/78, dt.23.10.1978.

(Contd....46)

- ii) Copy of Patta No.236 showing name of Bharatam Kistamma W/o Veeraiah for an extent of 0.9¾gts situated in Sy.Nos.48/1, 47/5 from out of 2.00 acres and 2.18 acres respectively, purchased for Rs.9600/- - issued by Deputy Tahsildar, ROR-I, Kothagudem.
- iii) Copy of registered sale deed No.976/78, dt.23.10.1978.
- iv) Copy of Will Deed dated 27.2.2003 executed by Smt.Bharatam Kistamma in favour of Sri Vukanti Gopal Rao duly Notarized.
- v) GP Receipt No.16721, dated 15.9.2016 for Rs.4234/- towards Property Tax for 2016-17 paid by Sri Vukanti Gopal Rao for H.No.3-2-134/2.
- vi) GP Receipt No.16722, dated 15.9.2016 for Rs.2000/- towards Development Charges – paid by Sri Vukanti Gopal Rao for H.No.3-2-134/2.
- vii) GP Receipt No.2174, dated 16.7.2019 for Rs.9222/- towards Property Service Tax for the years 2017-18 and 2018-19 – paid by Sri Vukanti Gopal Rao for H.No.3-2-134/2.
- viii) Lr.Rc.No.B/645/2021, dt.13.8.2021 of PIO O/o Tahsildar, Chunchupalli – certifying that the land in H.No.4-3-81/1 owned by Sri Balagam Sridhar (i.e. Respondent 5 herein) in Sy.No.137/1 is Government land and not assigned to Sri Balagam Sridhar, being non-tribal.
- ix) Lr.Rc.No.81/2021, dt.13.8.2021 of Panchayat Secretary, GP Vidyanagar Colony, Chunchupalli Mandal – H.No.4-3-81/1 was assigned to Sri Balagam Sridhar in the year 2007-08 for the purpose of Service Tax; documents relating to construction of house by Balagam Sridhar not available in GP office; GP had not accorded any construction permission for H.No.4-3-81/1.

Observation: The above documents are not disputed by the Respondent 5 and hence, they are treated as facts.

11. On perusal of the documents/evidences available on record, contentions/arguments put forth by both the parties, the points that arise for consideration before the Government are:

- i) Whether the SDC (TW) Bhadrachalam can initiate LTR proceedings on the petition of non-tribal Respondent 5 who is not concerned to the subject property?
- ii) Whether the documents produced by the non-tribal Respondent in LTR case No.84/2020/CCP can be taken into consideration?

(Contd....47)

- iii) Whether the orders passed by the SDC (TW) Bhadrachalam dt.9.2.2021 in LTR case No.84/2020/CCP are sustainable under law?
- iv) Whether a Revision lies against order dt.9.2.2021 of the SDC (TW) Bhadrachalam without appeal to the AAG?
- v) Whether possession of the testator of the Revision Petitioner viz., Smt.Bharatam Kistamma is in contravention of the Regulation?
- vi) Whether possession of the Revision Petitioner under Will deed dated 27.02.2003 is valid under the Regulation 1/1970?
- vii) Whether the orders dt.6.10.2009 passed in LTR case No.31/2009/KGM by SDC (TW) Bhadrachalam relate to the subject land of the present Revision and binding on the Revision Petitioner?
- viii) Whether the Hon'ble High Court has passed any directions staying proceedings of the present Revision under the LT Regulation?
- ix) Whether the Revision Petitioner is entitled for the relief prayed for?

**For point (i)**

The Special Deputy Collector (TW), Bhadrachalam through his para-wise remarks contended that the LTR proceedings can be initiated suo motu or on an application by anyone while the Respondent 5 contended that in view of the Hon'ble High Court decision reported in 2003 (3) ALT 453 to 455 (paragraph 7) the third party is also interested person under the Regulation.

The Revision petitioner contended that the *ratio decidendi* in the decision of the above case is relating to "applicability of principle of Resjudicata" to the adjudications under the Regulation, but not that initiation should be by a person interested in the immovable property. The Hon'ble High Court in para 7 not held as contended by the 5<sup>th</sup> Respondent that a third party is also interested person under the Regulation. The Hon'ble High Court in para-7 observed that "it is true that Regulation enables not only Special Deputy Tahsildar but even any third person to submit complaints about contravention of the Regulations", and stated that said observation is only *obiter dicta* (an expression of opinion but not essential to the judgement) and hence not binding as precedent. Therefore, the observations of the Hon'ble High Court in para-7 is not applicable to give a meaning that interested person means & includes third party who is having no concern over subject property of the lis.

The Revision Petitioner also contended that a third party is always stood as third party and he cannot become an interested

person in respect of the subject matter – therefore, whenever a third party/any person intends to proceed cantankerously to harass persons having rights over the properties, the authority is under the obligation to enquire into the object behind it as to whether it is in the interest of public or targeting a particular person for speculative reasons, but the SDC (TW) failed to conduct anything in this regard as to how he can be considered as an interested person in the subject property of the lis and what is his existing individual right.

Further, Sec.3(2)(a) empowers the 1<sup>st</sup> Respondent i.e. SDC (TW) to initiate case and pass ejectment decree – a) on an application by anyone interested or b) on information given in writing by a public servant or c) suo motu. Here, it is to be presumed that anyone interested means and includes anyone having an interest i.e. right over the property which should exist independently. The 1<sup>st</sup> Respondent ought to have examined and enquired whether the 5<sup>th</sup> Respondent will come within the meaning of “person interested” in respect of subject property and he can exercise jurisdiction under Sec.3(2)(a) by initiating LTR case and to pass an order?.

The 5<sup>th</sup> Respondent not belongs to Scheduled Tribe Community, not claiming any easement or tenancy rights over subject land and also not contended that by reason of possession by the Revision Petitioner and construction of building being carried, his primary source of livelihood is affected adversely in any manner.

The information provided under the RTI Act by the Tahsildar, Chunchupalli in Lr.Rc.No.B/645/2021, dated 13.8.2021 and in Lr.Rc.No.63/2021, dt.30.7.2021 of Panchayat Secretary, Vidyanagar Gram Panchayat, establishes that the 5<sup>th</sup> Respondent himself is a resident of scheduled area, encroached into Government land in Sy.No.137/1 and being a Ward Member of the said Gram Panchayat constructed a house (H.No.4-3-80/1) in it without obtaining construction permission from the competent local authority. Therefore, being a violator of provisions of the Regulation 1/59 r/w 1/70, the 5<sup>th</sup> Respondent falsely contends for due implementation of the Regulation in the interest of tribals, for wrongful gains.

Hence, the Revision Petitioner contended that the very initiation of the case by the 1<sup>st</sup> Respondent upon petition of the 5<sup>th</sup> Respondent being a person not interested in the subject property, is contrary to Sec.3(2)(a) of the Regulation 1/1959 r/w 1/970 and beyond the scope, purview and powers of the 1<sup>st</sup> Respondent. Therefore, consequent proceedings are to be held and declared as void ab initio, nullity and unenforceable under the law.

In view of the arguments of the Revision Petitioner and above discussion, 1<sup>st</sup> Respondent ought to have initiated suo-



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motu proceedings after causing due enquiry into the facts, without impleading Respondent 5 as petitioner to the proceedings.

**For point (ii):**

The 1<sup>st</sup> Respondent i.e. Special Deputy Collector (TW), Bhadrachalam stated in his para-wise remarks that the (5) documents listed therein were filed by the 5<sup>th</sup> Respondent along with the petition clearly show the transaction is hit by the Regulation and possession of the Revision Petitioner is illegal. The said contention of the SDC (TW) Bhadrachalam is contra to his findings in the impugned order dated 09.02.2021 wherein he made observation as "case finally called on 09-02-2021. Petitioner present and Respondents 1, 2, and 3 are absent and respondent No.4 present. The petitioner and respondents did not file any documentary evidence to prove the legal possession in the schedule land".

The 5<sup>th</sup> respondent (Sri Balagam Sridhar) one way contesting that the Revisional Authority should confine to the record only and contra to the said stand, he is contending with new set of facts that these documents were given to his custody by the Revision Petitioner on demand, which are not visible in his pleadings before the lower authority. The Revision Petitioner contends that those documents are fabricated one by the 5<sup>th</sup> Respondent with a malafide intention for wrongful/speculation gains – therefore, they should not be taken into consideration unless & until their originals are produced and their genuineness, validity or otherwise are determined by the competent Civil Court in a regular civil suit.

The record of the lower authority also establish that these documents are not formed part of the case record in LTR case No.84/2020/CCP as is evident from the orders passed on 9.2.2021 – and hence, they cannot be relied upon.

**For point (iii)**

A careful perusal of the records of SDC (TW), Bhadrachalam in LTR case No.84/2020/CCP disclose that there is no proof of service of Form-E Notice or hearing Notice to the Revision Petitioner from the date of initiation of the case and til to its disposal on 9.2.2021.

The question of appearance and consequent act of failure or appearance of the Revision Petitioner arises, if Notice on the Revision Petitioner is caused to serve in the manner prescribed under Rule 7 (1) & 7 (2) R/W Rule 10 of the Rules, 1969. But, no such Notice is served/opportunity is given to the Revision Petitioner. Hence, the order dt.9.2.2021 passed by the SDC (TW), Bhadrachalam is not sustainable.

**For point (iv)**

According to Section 6 of the Regulation 1/59 as amended  
(Contd....50)

by 1/70, the State Government may revise any decree or order passed by the Agent, the Agency Divisional Officer or any other prescribed officer under this Regulation. Thus, the Revision Petitioner is having statutory right under the said provision to file a Revision before the Government against order of the SDC (TW), Agent/Additional Agent to Government and the State Government is empowered to entertain the Revision and dispose it in accordance with the law.

Hence, Government being the Revisional Authority as empowered under Section 6 of the Regulation, has admitted the Revision Petition filed by the Petitioner and sought para-wise remarks of the 1<sup>st</sup> Respondent i.e. Special Deputy Collector (TW), Bhadrachalam along with original record of the LTR case No.84/2020/CCP. In compliance, the SDC (TW), Bhadrachalam has submitted original record of the LTR case No.84/2020/CCP and also submitted para-wise remarks to the grounds urged in the Revision Petition of the Petitioner. Even assuming contentions of the 1<sup>st</sup> and 5<sup>th</sup> Respondents as new set of facts raised by the Revision Petitioner, the 1<sup>st</sup> Respondent has submitted rebuttal contentions in his para-wise remarks which are considered as findings of the 1<sup>st</sup> Respondent to the said new set of facts.

Therefore, in view of the statutory provision under Section 6 of the Regulation, the Revision Petitioner is entitled to file Revision before the Revisional Authority against orders of the Special Deputy Collector (TW), Bhadrachalam also.

**For point (v)**

The Revision Petitioner contended that:

- i) As per recitals of registered sale deed dated 23.10.1978 – subject immovable property i.e. house site plot was sold for a consideration of Rs.9600/- and possession handed over by the vendor to the testator of the Revision Petitioner upon receipt of amount in the year 1969 itself and that the property continues to be in the possession of the testator without any encumbrances except the said sale;
- ii) sale took place and possession acquired in the year 1969, there is no cause of action arises under the Regulation particularly when no dispute exists between the original vendor and the purchaser (i.e. testator of the Revision Petitioner) with regard to delivery of possession in the year 1969 i.e. beyond 30 years old – the contents/recitals should be presumed as genuine and true by virtue of Section 90 of the Indian Evidence Act; and
- iii) the Regulation did not provide that persons belonging to non-tribal communities in possession with title over the immovable property alone allowed to continue in possession and that all other non-tribals without title should be ejected, irrespective of the fact that they are in continuous possession since prior to commencement of the Regulation 1/1970.

(Contd....51)

In support of his contentions, the Revision Petitioner relied on the following decisions:

- (i) 2005 (2) ALD page 482 in WP No.1952/1997 between Dasari Suryachandra Rao & others Vs Mandal Revenue Officer, Devipatnam & others, the ratio decidendi in the decision reported in 1995 (3) ALD 222 = 1995 (3) ALT in Kakarla Nageswara Rao Vs Government of AP & others - reference was made to agreement of sale dated 15.10.1969 and delivery of possession pursuant thereto – failure of primary authority record intelligible reasons, the order is not sustainable (para-9).

The Hon'ble High Court in para-8 of its decision supra, while referring decision of the Hon'ble Supreme Court of India reported in AIR 1996 SC 224 in S.Venkataramaiah Vs State, reiterated verdict of the Hon'ble Apex Court, wherein it is held that "Even assuming for the sake of argument that the transferee was in illegal possession prior to coming into force of the Regulation, the Special Deputy Collector has no jurisdiction to evict them by invoking section 3 (1)(a) and 3(2)(a) as the transaction was not encompassed by sweep of Sec.3(1)(a).

- (ii) Hon'ble High Court reported in 2009 (2) ALD 651 in WP No.14248/2001 between V.R.Koteswara Rao Vs Government of AP and others – possession took place under agreement of sale dated 15.11.1968 and sale deed executed on 18.10.1972 – authorities taken view that agreement of sale is not genuine and actual registered sale deed took place on 18.10.1972 is void and accordingly eviction vide GO Ms.No.87 & GO Ms.No.54, dated 26.9.2000 and 24.05.2001.

Para 8 – held that transfer includes contract for sale.

Para 10 & 12. All the authorities were of the view that the date of actual sale deed alone becomes material, such a view is contrary to law particularly when agreement of sale dated 15.11.1968 was admitted by the vendor.

- (iii) 2006 (2) ALD 683 – WP No.17318/2006 – between Kalagara Vigneswara Rao Vs Government of AP & others – possession delivered under agreement of sale dated 02.05.1969 and sale deed was registered on 14.09.1975 – held that, purchase as much as was done on 02.05.1969 and said transfer is not hit by the Regulation.

Further to the contention of the Government that agreement of sale is compulsorily registerable one and since subject agreement of sale is not registered

transaction is void. The Hon'ble Court held that, so far as agreement of sale relating to immovable properties is concerned, at that point of time, the registration was not compulsory and it was made compulsory w.e.f. 01.04.1999 under the amended Act 4 of 1999.

- (iv) 2009 (1) ALT 256 – WP No.19164/2007 – Dr.Yadla Ramesh Naidu Vs Sub-Registrar, Sabbavaram – mere registration of a document by the registering authority does not confer any title and that the registration of a document merely records sale transaction between the parties – therefore, it should be considered that the registered sale deed dated 23.10.1978 is a document which recorded the transaction but delivery of possession took place in the year 1969 itself.
- (v) Respondent 5 relied on the decision dated 23.8.2016 in WP No.13495 of 2007 – but the ratio decidendi of the order is relating to the scope of judicial review – the Hon'ble High Court held that the scope of judicial review on the matters arising out of quasi-judicial authorities is very limited and it cannot re-appreciate the evidence on record and come to different conclusion from the conclusion arrived at by the fact finding authority. Further, the decision dated 23.8.2016 in WP No.13495/2007 considering decision of the Hon'ble High Court in CRP No.1086/1996 dated 10.8.1998 in Ramatulasamma Vs Y.Masthanreddy & others, is a matter taken up against an order of Civil Court at Nellore in OS No.284/1989 and not relating to the provisions of LTR but to the Evidence Act, Stamps & Registration Act in the area falling outside Scheduled Areas.

In view of the above discussion and the law interpreted by the Hon'ble High Court and the Hon'ble Supreme Court of India, so far as determining commencement of possession of the testator of the Revision Petitioner, the recitals of registered sale deed dated 23.10.1978 are relevant and accordingly, the possession of the testator of the Revision Petitioner is considered as a transfer took place in the year 1969 which is prior to the commencement of the Regulation 1/1970.

**For point (vi)**

The SDC (TW) Bhadrachalam in his para-wise remarks and the Respondent 5 in his counter affidavit contended that "the Revision Petitioner who is a non-tribal cannot get land through a

Will from another non-tribe, that the Revision Petitioner is not a family member of the executants of the Will and is a pure transfer of immovable property between two non-tribals hit by the Regulation 1/1959 as amended by 1/1970.

The Revision Petitioner contended that:

- (i) Sec.2(g) or Sec.3(2)(1)(a) & 1(b) or Sec.3(2)(a) & Sec.3(4) of the Regulation did not restrict or prohibit succession of the immovable property situated in the Scheduled Areas in favour of any person or restricted the execution of Will to the extent of family members or class-I legal heirs of the testator;
- (ii) "transfer" means a transaction/transfer between two or more living persons and consequent delivery of possession of subject property in favour of the claimant of such transaction as on date of such transaction or prior to it as mutually agreed upon between the transaction parties – whereas, in the matter of devolution (acquisition) of (immovable) property under a Will does not involve any sort of transaction between the living persons i.e. executants(s) and beneficiary(s) of such Will as on date of execution itself and no passing/delivery of possession, interest, right or title will take place between them as on date of such execution. On the other hand, the Will come into force or operation after death of the executants or testator;
- (iii) Section 2 (h) of the Indian Succession Act, 1925 reads as "Will mean legal declaration of the intention of a testator with respect to his property which he desires to be carried into effect after his death." Similarly, Section 30 of the Hindu Succession Act reads as "any Hindu may dispose of by Will or other testamentary disposition any property, which is capable of being so disposed by him, in accordance with the provisions of the Indian Succession Act, 1925 or any other law for the time being in force and applicable to Hindus. According to Section 63 of the Indian Succession Act, 1925, every testator) shall execute his Will and according to Section 18 (e) of the Registration Act, 1908, the registration of the Will is optional at the desire of the executants;
- (iv) Action to Section 2(g) of the Regulation 1/1959 r/w 1/1970, "transfer" means – mortgage with or without possession, lease, sale, gift, exchange or any other dealing with immovable property, not being a testamentary disposition and includes a charge on such property or a contract relating to such property in respect of mortgage, lease, sale, gift, exchange or any other dealing; and

(Contd....54)

- (v) Will is not a transfer as per the decision of the Hon'ble High Court in the order dated 03.01.2013 in WP No.11198/2012 between Smt.Alapati Kanaka Durga & another Vs the Special Deputy Collector (TW), KR Puram, Buttaigudem Mandal & others.

Thus, the contention of the Revision Petitioner is that the disposal of an immovable property situated in the Scheduled Area under a Will executed by any person, irrespective of the fact whether such executants belongs to non-tribal or tribal community and that the beneficiary vice versa, do not fall within the scope and purview of the expression 'transfer' and it amounts to a succession at the desire of the executant as expressed in Will at his/her desire.

Having considered the contentions of both parties, the provisions of Section 2(g) of the Regulation and decision of the Hon'ble High Court, the point is concluded in favour of the Revision Petitioner holding that his possession under the Will (executed on 27.2.2003) is outside the scope and purview of the Land Transfer Regulation and that he came into legal possession of the subject immovable property situated in Sy.Nos.47/5, 48/1 to an extent of 1200 sq.yds situated in Chunchupalli village & Mandal from 31.7.2005 i.e. from the date of the death of the testator Smt.Bharatm Kistamma – Death Certificate issued by the Registrar, Births & Deaths Registration, Secunderabad Cantonment, registered on 4.8.2005 at Sl.No.58 of Book No.I.

**For point (vii)**

On perusal of the orders dated 6.10.2009 passed in LTR case No.31/2009/KGM by the Special Deputy Collector (TW), Bhadrachalam, it is found that the Revision Petitioner herein or his testator are not party(s) to the said proceedings and similarly the extent of 1200 sq.yds is not the subject matter of said order. Therefore, it can be said that the order of the SDC (TW) dt.6.10.2009 passed in LTR case No.31/2009/KGM is not relating to the subject land of this Revision. If the subject land is part of said order, as contended by the 5<sup>th</sup> Respondent, the said order would have been implemented and property covered under it would have been taken into Government custody – in such circumstances, no cause of action arises for the SDC (TW) to initiate fresh case against the Revision Petitioner. Moreover, the 1<sup>st</sup> Respondent i.e. SDC (TW) Bhadrachalam in his order dated 9.2.2021 in LTR case No.84/2020/CCP did not make any such finding that the subject land of 1200 sq.yds is covered under his previous order dt.6.10.2009 in LTR case No.31/2009/KGM.

Therefore, the point is considered in favour of the Revision Petitioner declaring that the orders dated 6.10.2009 passed by the SDC (TW) Bhadrachalam in LTR case No.31/2009/KGM not relate to the subject land of 1200 sq.yds under the Revision.

**For point (viii):**

It is ascertained from the orders of the Hon'ble High Court in WP No.4645/2020, WP No.11209/2021 and WA No.166/2021, that the 5<sup>th</sup> Respondent herein or the adjudicating authorities under the Land Transfer Regulation are not parties to the said proceedings and dispute is pertaining to construction of building by the Revision Petitioner without permission of the local authority. Similarly, the subject matter of WP (PIL) No. 195/2020 filed by the 5<sup>th</sup> Respondent is also relating to construction of building by the Revision Petitioner without permission from the local authority. There are no directions in the above Writ Petitions/Writ Appeal to the Revisional Authority affecting/staying proceedings of the Revision Petition under the Land Transfer Revision.

In the result, the point is considered in favour of the Revision Petitioner declaring that the Writ Petitions and the Writ Appeal will not affect adjudication and determination of the Revision Petition.

**For point (ix):**

Having considered contentions of the 1<sup>st</sup> and 5<sup>th</sup> Respondents, averments and arguments submitted by the Revision Petitioner, discussions at length and observations arrived at for points (i) to (viii), para 103 and also placing reliance on the settled legal positions of the Hon'ble High Court and the Hon'ble Supreme Court, the Revision Petitioner is entitled for the relief(s) as prayed for in the Revision Petitioner.

12. Perused the record, revision petition with its documents, para-wise remarks of the 1<sup>st</sup> respondent i.e. Special Deputy Collector (TW), Bhadrachalam, Objections/Reply submitted by the Counsel for Revision Petitioner to the Para-wise remarks of 1<sup>st</sup> Respondent, Counter Affidavit filed by Counsel for Respondent 5, Gist of Arguments made on 17.8.2021 by Counsel for Revision Petitioner and also status of the Writ Petitions, Writ Appeal filed by and made against Revision Petitioner Sri Vukanti Gopal Rao.

13. Therefore, Government after careful examination of the entire case record as discussed above, hereby allow the Revision Petition filed by Sri Vukanti Gopal Rao S/o Subba Rao R/o Kothagudem, Bhadradi Kothagudem District duly setting aside orders of the Special Deputy Collector (TW), Bhadrachalam dt.9.2.2021 in LTR case No.84/2020/CCP pertaining to the immovable property measuring 1200 sq.yds in Sy.Nos.48/1, 47/5 situated in Chunchupalli village & Mandal of Bhadradi Kothagudem District.

14. The District Collector, Bhadradi Kothagudem; Special Deputy Collector (TW), Bhadrachalam and Tahsildar, Chunchupalli shall take further necessary action accordingly.

**(BY ORDER AND IN THE NAME OF THE GOVERNOR OF TELANGANA)**

**Dr. CHRISTINA Z.CHONGTHU  
SECRETARY TO GOVERNMENT**

To

1. The District Collector, Bhadradi Kothagudem District.
2. The Special Deputy Collector (TW), Bhadrachalam, Bhadradi Kothagudem District

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3. The Tahsildar, Chunchupalli Mandal, Bhadradri Kothagudem District.
4. Sri Vukanti Gopal Rao S/o Subba Rao,  
R/o. Qr.No. A/10/A, near SC Hostel, Main Hospital, Kothagudem,  
Bhadradri Kothagudem District (Revision Petitioner)
5. Sri Balagam Sridhar S/o Sreeramulu, R/o. H.No. 4-3-801, Ramnagar  
Colony, H/o Vidyanagar Colony, Chunchupalli Mandal,  
Bhadradri Kothagudem District.

Copies to:

1. The Additional Agent to Government & Project Officer, ITDA  
Bhadrachalam, Bhadradri Kothagudem District.
2. The Dist. Panchayat Officer, Bhadradri Kothagudem District
3. The Gram Panchayat Secretary, Chunchupalli, Bhadradri Kothagudem  
District
4. Sri Nanduri Srinivasa Rao & K.Sremannarayana, Advocates,  
Bhadrachalam, Bhadradri Kothagudem District  
(Advocate for Petitioner).
5. Sri Madan Mohan Rao, Advocate, Survey No. 92&93,  
Flat No. 906, 9<sup>th</sup> Floor, B- Block, NCL- Sondhu, Pet Basheerabad,  
Quthbullapur, Mandal, Medchal Malkajgiri District- 500067  
(Advocate for Respondent5 )
6. The PS to Hon'ble Minister for ST Welfare,W&CW.
7. The PS to Secretary (TW)
8. The PS to Special Secretary(TW)
9. SF/SC

//FORWARDED:: BY ORDER//

SECTION OFFICER